

Sir John Skene, Lord Curriehill

*De verborum significatione*

THE  
EXPOSITION  
OF  
THE TERMES  
AND  
DIFFICILL WORDES.

Conteined  
In the foure Buiks of *Regiam Maiestatem*,  
and uthers, in the Acts of Parliament, Infestments,  
and used in practique of this Realme,  
and with diuers Rules, and common  
places, or principals of the Lawes.

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Collected and exponed be *Master John Skene*, Clerke of our  
Soveraine Lordis Register, Councell and Rolles.

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THE TITLES  
AND  
DEVELOPMENT WORLD

...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...

[illegible]





## To the Reader.



Have rather opened and schawen ane occasion to the gnd Reader, to performe this warke, then expounded, or declared the same; being ane matter nocht pleasand in it self, nor treated be others of before.

Gif I have preased to do weil or attempted that, quhilk others maie accomplish and make persite, the profite and commoditie redoundis to thee, quha at thy pleasure, may big upon this little ground and fundament. Gif utherwaies be error or ignorance, I have nocht satisfied thy desire and expectation, Sit erranti medicina confessio. For ane absolute memorie, and persite knowledge, in na thing erroneous, is proper to God, and not competent to man. Quhat euer I haue done, I did it not to offend thee or displease any man, bot to provoke others to do better, alwaies for thine awin weil, bewarre to reprehend my doings flowand from ane benevolent, and gude mind: except thou be assured to be reprehended of na man, quha cumis after thee and sall censure thy doings. I am affrayed of all Readers, for ilk man hes his awin Iudgement & opinion, quhair of their is als mony contrarieties, as diuersities of persons. Advise thenefore, & or thou do ony thing rashly, gif thou may, transact and agree with all the posteritie, that albeit thou doo als weil as Homer in his poesie: nane of them be unto thee, successor or imitator of Zoilus: so great

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is the var<sup>i</sup>etie of ingines, and inclin<sup>i</sup>tions, that nane can  
be sure fra reprehension. Reade therefore, and make thy  
profite of gnd thinges. Correct modestlie al errors, quibils  
are ignorant, and nacht wilfull. Eik al necessities omit-  
ted. Cut awaie al superfluities adiected. And quhatener  
thou doe esteeme of me, as I doe of thee and of al, to quhais  
knowledge, this my little labour sal happen to cum.  
And swa,

*Vñe, Vale: si quid nouisti rectius istis,  
Candidus imperti: si non, his utere mecum.*

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THE

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THE  
EXPOSITION  
OF THE  
DIFFICIL WORDS  
AND TERMES,

contained in the foure buikes of  
REGIAM MAIESTATEM  
AND VTHERS.

In the Acts of Parliament, *insest-*  
*ments, and used in the Practicque of this Realme,*  
with diuerse Rules, and commoun  
places, or principall groundes  
of the Lawes.



*Ctilia*, Armour, Weapons, Harnishing.  
Sta. 2. *Roberti Bruyse, e. ordinatum.* 27.  
Quhair it is statute that ilke man havand  
Ten pounds worth of gudes, sall have  
for the defence of his body and Realme,  
ane sufficient Acton, and basnet, with  
gluifes of Plait, ane speir, ane sword: and  
quha-sa-ever hes nocht ane acton, and  
basnet, sall have ane sufficient habirge  
on, or ane Irone Iacke, ane Knapskall of Irone, and gluifes.

The pain  
of them  
quha cumis  
evil armed  
to the  
kings hoist.

Swa that ilk man salbe readie *cum aëtilis & harnesis suis*, under the paine of escheit of al his gudes, the ane halfe thereof to the King, and the vther halfe to his Maister and Lord. *Alton* ane aulde French word, *Hocqueton*, quhilk corruptlie is pronounced *Oston*, *sagum militare*. Sum affirmis *Alton* to be an auld kinde of armour, for preservation of ane mans bodie, maid of steill or Iron, quhilk covered his head, alswell as the rest of his bodie: Quhair of zit ar sum extant as auld monumantes in the Hie-lands; Bot nocht dailie used, or worne. Vthers mair probable alledgis *Alton*, to be ane forme of armour, quhilk coveris ane mans bodie (except his head) downe to his knee, maid of Tassie, Ledder, or Linning claith, stuffed with caddes, & sticked very thick with threid, or silke of diverse coullors, and partial gilt, with spranges or streames of Gold fuilzie; And is commonlie used in time of battell under the habirgeon, to save ane mans bodie, fra the schot of ane arrowe: or fra the bruising of the straik of an sword. It is ane kinde of that abuilzement, quhilk in Latine is called *vestis virgata*, *varius virgis*, seu *aureis lineis distincta*, & *variegata*, ut est illud *Virgilii Aneid. 8. Virgatis lucent sagulis*.

*Responsalis.*  
*proloquutor.*

**ACTORNATVS** Lib. 4. c. si quis defendens 46. *actor*, *alienorum negotiorum gestor*. vtherwaies in the Lawes of this Realme called *responsalis*, quha makis answer for ane vther in judgement, speciallie for the defender Lib. 1. c. *Esse* 27. Lib. 3. c. *Placita* 12. *cum seqq.* Like as *Prolocutor* is he quha speaks for the persouer, as his forespeaker, Lib. 1. c. *consequenter* 13. Alswa *Actornatus* is he quha dois ony thing in an vther mans name or behalfe, As he quha compeiris for ane vther in courtes, or Justice aire, to passe upon inqueittes, and serving of retoures to the Kingis Chapel, or to give presence for him, quha sends him. For he quha aucht baith sute, and presence in ony court, suld not only send ane sutor to decide actions and causes, conforme to the Law, bot also suld compeir personally, or send ane Actornay, quhilk also he suld do, quha aucht presence allanerly, for ather he suld compeir, or ane Actornay for him, with the seale of his Armes, the quhilk all frieholders, dwelland within the schireffdome, ar obliged to do in al Schireff courts. Ia. 1. p. 9. c. 130. In justice aires, Actornayes suld be honest and sufficient persons of discretion. Ia. 1. p. 3. c. 53. And

*Actornatus*

*Attornatus Iustitiarum*, is taken for the Iustice depute. *Quon.* attach.c. prepositus 61. ass. Reg. Da.c. nullus 16. Attornay is not only the procurator quha is sent: Bot also the procuratorie or mandat quhilk is given to him, and zit they are different, for ane procuratory is commonly maid be ane privie man: and ane Actorny, called *littera attornatus*, is granted be the King, or ony vther, havand Chappel. Stat. Rob. 3.c. vlt. generally, in omnibus negotiis, loquelis, & placitis motis seu movendis. And therefore the Lord of the Session decerned ane requisition of ane aite, anent his mariage, maid be ane Actornay, to be nul. Because al sik requisitiones suld be maid be the superiour personally, or be ane procurator, havand special power to that effect.

*Adjurnatus*, ane French word, summoned or called to ane certaine daie, like as *Adiurnamentum* is callit in summondes, or citatio, *summonitio*, quhilk is defined, *certi dici & loci exhibitio partibus, ad diem legalem, Quoniam* attach.c. 1. Preceptor meus Mathaeus Wesenbecius in parat. Tit. de in ius vocando. Nu: 13. definit citationem, ut sit actus Iudicialis, seu Iudicii preparatorius, quo is quem coram fisti opus est, Iudicis mandato legitime vocetur, Iuris experiendi causa. Et assisa dicitur adiurnata ad alium certum diem, That is, continued to ane certaine daie. Lib. 4.c. Si petens 57. & curia dicitur respectuata, That is continued or respited Stat. 2. Rob. Br. Item quacunque 34. Cheshamens in consuetudines Burgundie Rub. 1. sect. 6. verb. messiers & serients. Nu: 88. multa (inquit) sunt nomina, que idem important, ut est citatio, in ius vocatio, monitio, edictum, denunciatio, conventio, & aliud, quod in vulgari nostro dicimus, adiurnamentum. *Adiournall* is the Iustice aite, as ane acte of adjournal, so called, because it is maid in the Iustice air. vid. Iter.

*Advocatio Ecclesie*, Is the richt of patronage, or the title and richt to present onie person to ane Kirk vacand, and nocht havand ane lauchfull Ecclesiasticall person to rule and govern the samin. Lib. 1. c. Dñs. 19. Lic. 3. sequitur 30. Dicitur autem advocatio Ecclesie, teste Fr. Hosomanno, vel quia patronus alieujus Ecclesie, ratione sui iuris, advocat se ad eandem Ecclesiam: & asserit se in eam habere ius patronatus, eamque esse quasi sua clientis loco. Vel potius cum aliquis (nempe patronus) advocat Avowson alium, iure suo, ad Ecclesiam vacantem, nempe loco aliterini (ve- of Kirkes luri,

*De verborum significatione.*

A vovson *luti defuncti*) *presentat; & quasi exhibet.* In the English Lawes of Kirkes. it is called, A vovson of Kirkes.

*Affidatio*, *Lib. 2. c. unde 49.* In the quhilk place, *Mutua affidatio*, is taken for ane mutuall faith, trueth, and obligation of fidelitie, quhilk is betuixt the wife and the husbände. And sicklike, it signifies mutual league, and band of fidelitie, quhilk is betuixt the over-lord, and his vassal, quha are bound & obliſhed *hinc inde* to vtheris, quhilk is called *mutua domini & homagii fidelitatis connexio. lib. 2. c. mutua. c. 68.* In ſik ſort, that how far the vassall is bound be reason of homage to his ſuperiour: ſa far the ſuperiour is obliſhed to his vassal, except reverence and honor allanerly: for the ane ſuld obey and ſerve his maister. the vther, ſuld interteine and defende his man. And the vassall ſuld honour and teverence his maister as his ſuperior: But the maister ſuld not reverence the vassall: for like as of the law, there is na ſoveraintie, nor impyre amangis them that are *paris*, conforme to the rule of the Lawe, *par in parem non habet imperium.* Euen ſwa, the ſuperiour is not obliſhed to mak onie reverence to his inferior, bot ſuld receive honour fra him. Item *Diffidatio*, (h.e. *inimicitiarum capitalium denuntiatio*, quhen ane defies ane vther, & gives up kindneſſe with him) is contrair to *Affidatio*. Baith the ane and the vther is driven *a ſide. vel ſideſinate*: or fra ane word uſed in the ſewes, *ſaida*, that is, battell, ſeid, injurie, hatred. As we commonlie ſay, deidly ſeid. And *ſœmina dicitur ſaidam non facere*, gl. in ſecl, vlt. de lege Contradi. li. 2. de feud. be reason women be the Law, ar not ſubject to weir-fair, to battell, or proclamation maid for that cauſe.

Diffidatio.

Faida.

*Amerciamentum*, or *Forisfactum Curie*. The un-lawe or americiament of a court, for abſence in lawfull tyme, for ane fault, trespas, or ony vther cauſe, as is maniſeſt in the Register, in the action perſued be the Theſaurar, Conar the burgh of Perth, 16 Decem. 1542. The un-law in the Chalmerslanis air or court, is fiftie ſchillings, and twa ſchillings to the Serlands of the burgh of ilke un-law. The un-law before the Juſtice on the North parte of the water of Forth, aucht Kye, ane col-pindach to the Crouner, and twa ſchillings to the Clerke: And in the South ſide of the water of Forth, as in Louthian, & betuixt the water of Tyne and Forth, ten pundes, and ane colpindach,

The un-law of Courts.



colpindach, or threttie pennies to the Crouner, and twa schillings to the Clerk. In the Schireffe-court, it suld not exceede sexteene schillings, and twa schillings to the Clerk, or ane colpindach, or threttie pennies. In the Barronne court the same lawes & un-lawes, suld be keiped, quhilk are vsed in the Schireffe court. In the court of them quha haldis of Barrones, and are called *milites*, their unlaw is halfe of their superiours unlaw. The unlaw of them quha are called *subarmigeri*, is ane Kowe, ane zowe, or thre schillings, *leg. Malc. Mak. c. 4.* The unlaw within Burgh suld not exceede the summe of aucht schillings, *leg. burg. c. forisfactum 42.* The unlaw of them quha compeiris not in Parliament, being lauchfullie warned thereto, is ten pounds. Ia. 1. pri. Julii 4. p. 4. c. 82. & p. 5. c. 99. Quhilk is likewise the unlaw of them quha compeiris not in generall Councelles, quhilk nowe is altered be the newe acte of Parliamente, maid be *Our Sovereine Lord King James the Sext* 29. Julii. p. 11. c. 34. quhair it is statute, that every Earle sall pay three hundreth poundes, ilk Lorde twa hundreth poundes, ilk Prelate ane hundreth poundes: And every Burgh ane hundreth markes, in case it fall happen ony of them to be absent fra the Parliament.

*Annexation*, Ane Latine worde, quhilk signifies ane fast knitting and binding, as when ane thing is bund or knit with ane vther, and baith as it were vnited togidder, and incorporat in ane. As quhen ony Lord-ships, lands, Castelles, Customes, Offices, Fischinges, or vther rents are annexed to the Croun, to remain perpetually therewith, quhilk is called *incorporatio, quando bona aliqua, veluti terra, rediguntur in corpus fisci, cum eorum scribitur Inventarium, manu publica, continens eorum nomina & qualitates, & ita ponuntur in numero rerum fiscalium l. quando 3. & ibi gl. C. de bonis vacan. li. 10.* In the Lawes of this Realme, there is twa kinds of Annexation: The ane quhilk may be called *tacita*, quhair in the word of Annexation is nocht expreemed, bot vther wordes equivalent theirtō. The vther, is *expressa*, quhilk containis manifest mention of Annexation or vnion. The first forme is vsed in the daies of King *David* the second, 6. Nov. 137. quhair it is statute and ordaned, that all lands, rents, and possessiones, quhilks of auld pertained to the Croun, or the Kings domaine and propertie, suld all and haill,



and perpetually remaine in the hands and possession of the King, for his sustentation and living, without ony alienation theirow. And sik-like, 27. Septem. 1367. with consent of the three Estaites, it was statute for the Kings better sustentation, and living, that all rentes, fermes, kanes, customes, forrests, offices, and vther emoluments quhatsumever: And also all lands, asweill the propertie, and vthers, in possession, quhair of King Robert 1. father to King David the second, deceased as of sic; and that all possessions, and landes quhilke pertained to the richt and propertie of the Crowne, the time of the saide King Robert, or of King Alexander the third, or of the said King David the second, suld returne all and haill to the Crowne, with all advocations of Kirks, and all service pertaining theirow; To remaine perpetually with the Crowne, notwithstanding ony alienation theirow, maid to ony person, and that na disposition theirow be maid thereafter, without consent of the three Estaites. And gif ony person had ony of the saides lands laboured with his awin pleuch: It was ordaned that he suld pay as meikle ferme and dewty therefore, as the samin might gudly pay, or as ony vther lands als gud, and als meikle, vsed to pay. And siklike, al the great and smal customes, and burrow mailles of the Realme, are ordaned to abide and remain with the King, till his living, beane act maid be Jam. 1. Parlia. 1. c. 8. Of the second forme of Annexation quhairby landes, possessions and vthers, *per expressum*, are annexed, vnited, and incorporate, diverse and findry examples are extant in the acts of Parliament of King James the second, Parlia. 11. c. 4. and of vthers maid thereafter. Lands, and vthers dewties, or possessions quhatsumever annexed to the Crowne, being annalied or disposed, na lauchful dissolution maid theirow, It is lesum to the King, nocht withstanding the said alienation to put his hand to the saides lands, and take them backe againe to the Crowne, *brevi manu*, without ony ordour or proces of law. And as concerning the profittes theirow, quhilke are extant, *pendentes*, & *nondum consumpti*, the time of the said intermission, the King, or his comptroller may intromet therewith, in the samin maner, as he may intromet with the lands *jure soli*, quia *fructus pendentes*, & *extantes consentur pars soli*. And touching the fructes, and profittes of the lands quhilke are spended, and consumed;

The

Lands annexed and not dissolved, may not be analied. Of the profittes of landes annexed wrongously analied.

The King and his comptrollar, aucht and suld repeat the samin fra the possessours, and vptakers of the saids fructes, of all zeires of their intromission therewith, be way of action, because they ar consumed and spended. Quhilk deed consistand in *facto*, suld necessarily be proven be ordinar way of action. To the quhilk haill profitis, the King hes gud right, in respect that of the Law, *mala fidei possessor*, can never acquire and conqueis to himselfe, ony fructes or profitis, ather extante or consumed. And true it is, that al theys wha receivis ony intestment or vnlauchful disposition of the Kings annexed property, ar *mala fidei possessores*: they receiving the samin against the manifest Law of this Realme, the ignorance quhairof excusis na inhabitant of the samin. And mairover, true it is, that the foresaid forme of intromission with the Kings annexed lands, and repetition of the profitis theirow, hes bene in use and practik sen the making of the acts of Parliament thereanent: Like as in the beginning of the reign of King James the Fourth, 18. Jan. 1488. the landes and Lord-ship of Brechin, and Nevar were taken fra David Earle of Crawford, and ane tearme assigned to proove against him, the availe of the mailles and dewties of the saides Lands with the pertinentes, intrometted with be him, sen the time of the gift theirow. Item the King may intromet with his annexed propertie, and profitis theirow, quhidder he be *major* or *minor*. For gif there be na lauchful dissolution of the samin, he is aye as it were *minor* anent the said property. Al annexations ar perpetual, and induris continually, ay and quhil ane lauchful dissolution be maid be ony King: Induring the time of the quhilk dissolution, the annexation ceasis, and sleepis, and the dissolution being ended be deces of the maker theirow, the said annexation beginnis to quicken & *quasi reviviscere*; In sik sort, that the King quha succedis to the maker of the said dissolution may set na fewes of his annexed property, be vertue of the dissolution maid be his Predecessor, bot mon make ane new dissolution to the effect foresaid. Quhilk fault and vice, I find in divers and findry intestments of the propertie: And specially in the minority of King James the Fifth, quhilkis are wrangously given be vertwe of the dissolution maid by King James the Fourth, his Father. *Vid.* Dissolution.

The Kings  
propertie  
wrangous-  
ly analied.

Annexati-  
on is perpe-  
tual.

*Annuell*, ane word vsed in the practik of this Realme, for ane

zeirly revenue, or dewty, payed at certaine termes, ather legal, quhilks are called *termini legales vel legitimi*, prescribed and appointed be the law of this Realme, sik as Martin-mes and Whitsunday. Or conventional, as pleasis the parties til agree and appoint, be paction and contract, as betuixt *Zule* and *Candle-mes*, or ony vther time. In the Acts of Parliament maid by Queene *Mary* 4. Parlia. 29. Maii, c. 10. mention is maid of ground annuel, few annuel, and top annuel; quhair of I have rid nathing in ony vther place: and am incertain quhat they do signifie: bot referris the samin to the judgement and opinion of the Reader.

Ground annuell.

Alwayes, ground annuel is esteemed to be quhen the ground and property of ony land bigged or unbiggered, is disposed and annallied for ane annuel to be payed to the annalier thereof, or to ane

Top annuel.

vher person, sik as ony Chaiplaine or Priest. Top annuel, is ane certaine dewty, given and disposed furth of ony bigged tenement, or land, of the quhilk tenement the property remainis with the disponer, and he is only oblished to pay the said annuel.

Few annuell.

Few annuel, is ather when the few mail, or dewty is disposed as ane zeirly annual. Or quhen the land, or tenement is sette in fewferme heretably, for ane certaine annuel to be payed *nomine feudifirmae*. The annuel of Norway, quhair of mention is maid in

The annuel of Norway.

the actes of Parliament of King *James* the third, and in the Register of this Realme, was ane annuel of the summe of an hundredreth markes, sterling money, quhilk the Kings of this Realme was oblished to pay zeirly to the King of Norway, for the cause after specified. Because *Donald Banc.* brother to King *Malcolme Cammoir*, wrangeously after the decease of his brother usurped the richt of the Crown against his brother sons, *Edgar*, *Alexander*, *David*, and vthers. And for helpe, and supply, gave all the Iles of *Scotland* to the King of Norway, quhair throw, and for vther occasiones, mony bluidy and cruel battels followed, until the battel of *Larges*, 3. August 1263. In the time of King *Alexander* the third. And of *Acho* King of Norway: Quha thereafter in the samin zeire, 22. Januar. departed from this life in *Orkney*. And the Scottis beand victorious, *Magnus* the fourth of that name, King of Norway, son to the said *Acho*, maid peace and concord, with the said King *Alexander*, in anno, 1266, and renounced, quite-claimed, and discharged all richt, or title quhilk he or his successors had, or might have, or pretend to the Iles of

*Scotland.*

*Scotland.* The King of *Scotland* payand therefore zeirly to the said *Magnus*, and his successors ane annuel of ane hundreth markes, starling money. Quhilk contract and agreance was ratified, and confirmed be *Haquinus* King of *Norway*, the fifth of that name, and *Robert* the first King of *Scotland*, in anno 1312. Bot at the last, the said annuel, with all the arrierages, and by-runs thereof, was discharged, and renunced *simpliciter*, in the contract of Mariage, betuixt King *James* the third, and *Margaret*, onely daughter to *Christianus* the first, King of *Norway*, *Denmark*, and *Sweden* 8. Septemb. 1468. Quhilk discharge is nocht only ratified, bot also renewed thereafter be the said *Christianus* 12. Maii. 1469. And likewise the said King *James* the third, 24. Febr. 1483. commanded his Ambassadors send to the Paip, to desire confirmation of the said perpetual renunciation, and discharge of the contribution of the Isles.

*Average*, vtherwaies *Average*, from *Averia*, quhilk signifies ane beast, as sal be hereafter expounded. And swa consequently *Average*, signifies service, quhilk the tennent aucht to his master, be horse, or cariage of horse, 18. Jan. 1501. *John Stewart* contrair *William Blair*. In the act of Parliament Ia. 4. p. 2. c. 10. It is written *Average*: and like-waies, in the indenture at *Perth*, pen. Mart. 1371. betuixt *Robert Stewart* Earle of *Menteith* upon the ane parte, and Dame *Isabel* Countess of *Fife*, on the vther part, it is plainly written, *cum Avaragiis & Cariagiis*. In the quhilk Indenture, the said *Isabel*, daughter and aire to *Duncane* Earle of *Fife*, and spouse to *Walter Stewart*, brother to the said *Robert*, in time of her Widuitie, after the decease of her said husband, obliged her, to resigne the said Earldom of *Fife*, in the Kings hands, in the favour of the said Earle, for new heritablement thereof, to be given to him. The quhilk Indenture is subscribed be *Ioannes Rollo*, quha was Secretary to the said Earle. And conforme thereto, resignation was maid: for the quhilk scho received zeirly for her sustentation, ane hundreth, tourty five pounds, sterling money. Like as also the said *Isabel*, 12. Junii, 1389. resigned *ad perpetuam remanentiam*, in the hands of King *Robert* the third, the Barony of *Strathbuck*, *Strabrown*, *Discher*, *Toyer*, with the Ile of *Tay*, lyand within the Schiref-dome of *Perth*. The Barony of *Cowll*, and *Oneill*, with the fortalice theirow, and patronage of Kirk of *Kincardin*, within the Schirefdome of *Aberdene*,

*Isabel Countess of Fife*

Sundrie  
lands per-  
taining to  
the Crown.

dene, the Baronies of *Crumdail* and *Affin*, within the Schirefdome of *Innernes*, the lands of *Strahovie* and *Abbrandoly*, within the Schirefdome of *Bamf*. The lands of *Logyacry*, within the Schirefdome of *Perth*, the Barony of *Calder*, within the Constabulary of *Linlithcow*, and Schirefdome of *Edinburgh*, and the lands of *Kellensyth*, within the Schirefdome of *Striviling*. This I thocht gud to advertise the Reader how the Earledome of *Fife* and vthers lands foirsaid, pertained to the Crown. Duke *Murdo* son to the said Earle of *Fife*, being foresalted be King *James* the first, 1424. The said Earledome was decerned to remaine perpetually with the Crown, like as it dois, as ane speciall part of the annexed property. As also the Lordship of *Methuen*, within the Schirefdome of *Perth*, and the Barony of *Kelly*, within the Schirefdome of *Forfar*, did fall in the hands of King *Robert* the first, be dome of foresaltour pronounced against Schir *Roger Mowbray* Knicht.

*Arrendare*, ane Spanish word, commonly used in chartours and infestments of this Realme, in *Latin*, *locare seu rem aliquam utendum, fruendam, non gratis, sed certa mercede interveniente concedere*. For conforme to the French, rent is ane certaine dewty, as annuell rent, and *arrentare* and theirfra *arrendare, quasi ad certum rentum seu redditum dimittere*, to set and give lands or tenements to ony for ane zeirly duety.

*Arrieragium*, or properly *Arrieragium*, an French word, *arrier*, bakward: in Latine *retrò*, as *Iamais arrier*, used be the Earls of *Angus* in their Armes, to quhom it perteines to fecht the Kingis wantgard, as of auld it did appertain to *Makdusse* Earle of *Fife*, as writis *Hector Boëtius*. *Arrieragium firmarum*, signifies the by-run annuel, mailles, *fermes*, profits or dewties of ony tenement, or lands, the quhilk restis upon the samin unpayed, *Quoniam atach. c. si tenementum. 27. le. Burg. c. si quis voluerit. 156.*

- 1 *Assisa*, ane French word, quhilk signifies properle sitting, or Session, and hes divers vthers significations in the Lawes of this Realme: for *assisa* is taken for ane constitution, ordinance or law. *Lib. 3. c. sequens. 23.* quhair it is called *recognitio*. And *Lib. 1. c. si non 23.* mention is maid of ane effonzie, or excuse, conforme to the Law and assise of the land. And *assisa* is called ane constitution, law or statute. *Lib. 4. c. die luna 13.* as *assisa regis*

David.

David. Stat. Alex. c. assisa 18. And *assisatum* signifies statute, or ordaned. St. 2. Ro. Br. c. Item *ordinatum* 26. King David maid an assise, or constitution of him quha was accused in judgement, and clenged, for the death of his wife, *assisa Reg. Da. c. si quis velit* 33. *Assisa terra*, is taken for the Law and constitution of the Land. Lib. 4. c. si vir. 16. c. sciendum 64. *assiam infringere*, is to violate and transgres the Law. And *assisa* of King James the first, of weights and measures maid at Perth. 11. Mart, and the first zeir of his reigne. *Iuxta assiam* Lib. 2. c. dicitur autem 74. is conforme to the law, or *Iuxta legem*, is conforme to the time prescribed be the Law, Lib. 3. c. sequens 33. in fin. Item, *assisa* is called ane measure, or certaine quantity, as the barrell bind of Salmond suld keepe and containe the assise and measure of fourteene gallons. Ia. 3. 1. Octob. Parl. 14. c. 110. and all Salmond suld be packed in barrels, of the measure of *Handburgh*, after the auld assise, and na smaller barrels nor vessels. Ia. 3. Parl. 10. cap. 76. *Assisa herringi*, the assise Herring, signifies ane certaine measure and quantity of Herring, quhilk perteinis to the Kings as ane part of his customes, and annexed property, *Iam. 6. p. 15. c. 237*. For it is manifest that he suld have of every Boat, that passis to the drave and slayis Herring, an thousand Herring of ilk tack that halds. viz. of the Lambmes tack, of the Winter tack, and of the Lentrion tack, in December 1516. The Kings Advocat contrar *Williams Harper*, and his Colleges. Item, the Kings rents of assise is interpreted, to comprehend the Kings lands and customs, 9. Decem. 1466. and 11. Mart. 1500. In the action betuixt *James Ogilbie*, contrair *Patrick Gray*, certaine oxen was poynded for findry unlawes, and for the rent assise aucht to the Kings Hienes for the blanch fermes of the lands of *Arly*. And sik like, the third of the Kings rent of the assise, That is to say, the lands and customes suld perteine to the Queene, as her dowry, *Iam. 3. 9. Octob. p. 1. c. 2*. In this Realme ane assise is called ane certaine number of men lauchfully summoned, received, sworne and admitted to judge and discern in findry civil causes, sik as perambulations, commissions molestations, purpresture, division of lands, serving of brieves, and in all and findry criminall causes. For be the law of this Realme, all crimes suld be decyded and tried be ane assise, Stat. Alex. c. 3. quhairof their is twa kiodes. An ordinarily in use, quhilk may be called ane litil assise, of the numner of thir-



Two formes  
of assises.

teene or fiftene persons, *lib. 3. c. generalia 23.* The vther called an great assise, quhilk consists of five and twenty persons, *lib. 1. c. pœna. 16. lib. 2. c. dos 19.* and all the assisors in baith the ane and the vther assise suld sweare an solemne aith, to judge and discern richtly, *vid. Bona patria*, for the quhilk cause they ar called *Iuratores lib. 1. c. pœna. 16.* and in sum buiks *assisa*, is called *jurata patria*, and in the English lawes an Jury. The great assise (quhilk is not commonly used in this Realme) is chosen against sik persons, as hes bin upon an little assise, and ar accused *de perjurio vel temerario juramento*: and that they have done wrang against the lawes in clenging ony trespassor, quha is guilty and fowle of the crime. In the quhilk case, the man that is clenged, albeit wrangeously, cannot be filed againe or punist: for he being anis quite, he is ever quite for that crime: bot the assisors may be accused of their wrangous deliverance. *I. 3. p. 8. c. 63.* The great assise suld be of five and twenty persons, nobil and gentlemen: and the Lords of the Session, upon the first day of Junij, 1591. declaird all them to be esteemed, halden and repute as noble persons and gentlemen, that fall happen to be summoned upon sik an assise, quha ar landed men, albeit they be inferior in rank and dignity to them, upon quhais assise they suld passe.

*Attaynt, Taynt*, an word meikle used in the English Lawes, *Attayntus*, is accused, filed or convict for ony crime or cause. *Stat. 2. Ro. Br. c. Item c. 9. Item de minus 21. c. Item 24.* An Judge being convict or attaint of taking of buds or of partiality, suld be punished at the Kings will, and tine his Office. *St. 1. Ro. Br. c. dominus rex. 22. Stat. 1. Ro. Br. c. Item quod nullus 8. Ia. 5. p. 7. c. 104.* Bot attaint or *Taynt*, is called the deliverance or probation of foure and twenty (*alias* five and twenty) leil men, the quhilk may be called an great assise, *lib. 1. c. pœna 16.*

*Attachiamētum*, from the French word, *attacher, ligaren, eſte-*  
*re*, ane charge or binding of ony person, to the effect he may be drawn, and compelled to compeir in judgement and answer as law will: In the Preface and beginning of the buik called *Quoniam attachiamēta*, *attachiamētum dicitur quoddam vinculum legitimum per quod pars defendens invita astringitur, ad standum juri, & respondendum parti de se conquerenti juridicè.* And *attachiamēt* sometimes is of guds and geare, as in contracts, conventions, and actions of moveable guds, in the quhilk the gudes  
and



and geare of the defender are *attach'd*, untill he finde caution and pledges to answer as law will, quhilk being funden, the *attachiement* is relaxed and lowsed. Sumtimes *attachement* is of ane mans person and body, as in actiones of wrang, or criminall causes. In the quhilk, the person of the transgressors suld be first *attached*, and gif he be disobedient, or fugitive, his guds and geare may be *attached*, untill he finde caution to underly the law. Swa commonly, bot not perpetually, *attachiamentum, vel est bonorum, vel corporum, sicut arrestamentum bonorum*: as gif the owner can nocht apprehend ony man indited, to *attach* him personally to compeir in the Justice aire: then he suld arreist all his gudes moveable and unmoveable to remaine under sure pledges: and be furth cummand to the King, in case he compeir not. *leg. Male. Mak. c. 1.* and in criminall causes, specially in treason the person or body of the defender suld be first *attached*, and put in sure firmance, untill he have thoiled ane assise, quhiddir he be quite or foule. *Ja. 2. p. 12. c. 49.* And in civil causes, the guds & geir of the defender suld be first arreisted. *li. 4. c. 1.* as writes *Mattheus de afflictis, in consuetudines Sicilia, constit. Humanitate. Nu. 33.* Be the civill Law in execution of decreetes, first the moveable gudes pertaining to the debtour, suld be first discuss'd, thereafter his lands and immoveable gudes may be comprised. Thirdly, the debts auchtand to him, quhिल्s are called *nomina debitorum*, may be persewed and discuss'd, *l. a Divo Pio. 15. sect. 3. De re Indicar.* Quhilk is conforme to the act of Parliament, quhairby it is statute, that the lands pertaining to the debtor suld nocht be comprised, untill his moveable gudes be first searched, socht, and discuss'd. *Ja. 3. p. 5. c. 36.*

*Averia. lib. 4. c. si quis federis. 23. c. quicunque. 31. ass. Reg. Da. c. si quis federis 41.* In the quhilk place it is call *melius animal*, the best aucht, from the French, *le meilleur avoir*. Quhilk be the law is given be the husbandman to his maister, as ane herezelde, and *lib. 4. c. quicunque, 31. Averia*, is called *animal*: the quhilk place is *de natiomine animalium*, that is, of poinding of cattell, or of moveable guds.

*Avunculus*, properly is the mother-brother, bdt sumtime conforme to the French manner of speach, it is taken for the father-brother, in Latin *patruus. l. 2. c. si quis liberum 24. c. deficientibus 34. de iudic. c. Item nota 15. In quibus locis ius successionis dicitur pertinere ad avunculum eiusque liberos, quod non est consentaneum iuri nostro*

civili, si avunculum proprie accipiat pro fratre matris, quia cognatum, h. e. consanguineorum, ex parte matris apud nos nulla est successio. h. e. cognati non succedunt aliis.

## B

**B**AGIMONT, his taxation of benefices. Ja. 3. p. 6. c. 43. Ja. 4. p. 3. c. 39. The Pape in the time of King James the third, send in this Realme ane Cardinall and Legat, called Bagimont, quha did make ane taxation of all the rentalles of the Benefices, that the same might be knawin to the Pape. To the effect, that when ony person came to Rome, seikand bulles or right to ony Benefice fra him, he might conforme to the said rental as he pleased, sell the same for sameikle Silver, or Gold, as he thocht maist profitable. Quhilk taxation is grounded upon the Canon Law, in the *Extra vagant, suscepti regiminis, lib. 6.*

*Bairman. Vid. Divor.*

**B**allivus, ane French word, Bailif, ane Bailly or Judge. *lib. 2. c. 10. c. 31.* quha has ane ordinar power and jurisdiction. Nam *ballivus sive iudex non potest esse arbiter. lib. 2. c. 4.* Ballia, in Latin, Provincia, ane Baillery or jurisdiction. *lib. 1. c. 7. c. 18. stat. 2. Rob. Br. c. 4. c. Robertus. 28. Dicitur autem Ballivus a Baal, h. e. domino, quia ballivi domini sunt sui subditis, quasitorum magistri. Et domini, Rebuffus in consil. regis, de sentent. exco. art. 7. gl. 1.* And in the Checker compts, the Baillies of Burrowes are properly called *Ballivi*. Quha be the Lawes of this Realme, makis compt zeirly in the Checker, of their Burrow mailles, as ane part of the King is annexed property, and also of their common gude, quhilk suld be employed in the necessar affaires of the Burgh. And like waies in the Checker, compt is maid of the Kingis property, be sik as are called *Ballivi Regis*, and intromittis with his renta: quha is comptar called *computa Ballivorum ad extra Scel. Extra Burgos*. And are improperly called *Ballivi*, being Chalmerlanes in put, and out put be the Comptroller, for quhom he suld be answerable. Mair over, in the Checker compts maid per *manus*, is quhen the Comptroller is charged in his compt, conforme to ane former compt, rolled of before. And *comptum in manibus*, is quhen the Comptroller is

*Computum  
ballivorum  
ad extra.*

charged

charged in his oration, be ony precept direct be him selfe, or be ony intronission maid be him of the Kingis rentes, before the ma-  
 king of his compt, or with ony dewty, siluer, or vther thing per-  
 taining to the King extraordinarily, and not zeirly, as ane part of  
 his patimony.

Computum  
per rotulos  
& extra ro-  
tulos.

*Banrentes, Banrents. Jam. 1. par. 7. c. 101.* In the quhilk place it is manifest, that Ban-rent is ane kinde of estaite, greater and mair honorable then Barronnes : For the Barronnes ar permitted to chuse their Commissioners, to be sent for them to Counsell and Parliament, to propone all and sundry needes and causes perteing to the commounes, in the Parliament or generall Councell : Bot the Ban-rents suld be warned be the Kings speciall precept, to compeir personally in the Parliament or Council ; In sik maner, as Bishops, Earles, Lords, Abbots, Priors, usis to be summoned. This word is commonly used in the English Lawes, and in findry lawes of yther Countries. *Cuius lib. 2. de Fend. Tit. 7. de nova fidelitatis forma. Boerius in decisiones Burdegalenses, Traict. de autoritate magni Consilii. Guido Papa. quest. 614. & 326. jus Normand. 5 c. 2. Num. 7. Zasius de Fend. Tit. qui Fendum dare possunt.* Some callis Ban-rents them quha hes Banners rent, and divided in findry parts. Vthers callis them quha hes the rent or zeirly dewty of ane Barronne. And sik-like, some understandis them quha bearis the Kingis Baner in his hoist and army: quhilk office and honor perteinis heretabably and allanerly to the Constable of *Dundie*, the Kings Baner man. But all men when they ar belted and made Earles, ar called Barronne Ban-rent, and Lord of our Soverain Lordis Parliament : Quhairby it is manifest, that the said dignity is commoun to many, and nocht proper to ane man : And therefore seeing *Zasius* in the place foresaid, writtis, that Ban-rent is ane dignity concerning weir-fare : I thiek in my opinion, that Ban-rentes are called *Chevaliers* of Armes, or Knichtes, quha for obteneing of great honore, dignities, or riches, hes power or priviledge granted to them be the King, to raise and list up ane Baner, with ane company of men of weir, either horse-men, or fute-men, quhilk is nocht lessum to ony Earle or Barron, without the Kingis speciall licence, asked and obtained to that effect. As *Henry Pasquier Advocat. Lib. 2. des recherches de la France. c. 9. Fol. 100.* provis be money and findry arguments of the History of *France*. And Doctor *Thomas Smith*, ane learned man, in his buike, anent the Commoun weill of *England*.

*Lib. 1. cap. 17.* faith, that Knights, Ban-rents ar maid in the field, with the ceremony of cutting the point of their standerd, and making of it as it were ane Banner, they being before bacheliers, are now of ane greater degree, allowed to display their Armes in ane banner, in the Kingis hoist and armie.

*Bannum*, Banished for ony crime or vther cause. *Bannum*, signifies ane trumpet, in Latin *tuba*, as writis *Alciatus li. 2. parer. c. 2. ex Procopio, lib. 4. belli Persici*. And be the common use and consuetude of this Realme, quhen ony person is banished, or put to the horne, the same is done with three blatts of ane horne, or ane trumpet. And for that effect, it is statute and ordained, that the Kings Maire or scriand shall have ane horne and wand. *Jam. 1. p. 7. c. 99.* for with the horne he denuncis men rebelles, and with the wand, hee receivis them to the Kings peace, quhilk therefore is commonly called, the wand of peace. *An Bannum possit impunè offendi in corpore & bonis vid. Chessaneum in consuetud. Burgund. p. 2. sect. 1. ver. confiscationis, Nu. 7. cum seqq.*

*Dux.*

*Baro*, ane Barrone. *Zafius de Feuda. Tit. qui feudum dare possunt*, writis, conforme to *Cornelius Tacitus in Libro de Germania*; That *Dux*, or ane Duke, is the Governour of ane Province or Armie. *Comites*, or Earles, are they quha are affeours to the Duke, or Prince, swa called *à comitandis*, becaus they accompany the saidis Dukes, and never passis out of their presence. *Marchiones*, ar Marcheques, Wardanes, or keepers of the Bordoures: For Mark, March,

*Comes  
Marchio.*

in Latine *Limes*, and Mark grave in Dutch, is *Comes limitaneus*. And all *Marchiones* dwelling on the bordours or Marches of the Cuntry. As in this Realme, the Earledome of *March*, quhilk perteinis to our Soverain Lord, as ane part of his annexed property. Bot *Comes Martialis*, or Earle Martiall, is ane man of dignity or jurisdiction, *à Marte vel bello*: Because the jurisdiction of weir-fare perteinis to him. *Alciatus libro de singulari certamine. c. 32. Affirmis*, that like as the Earle is inferiour to ane Duke, swa ane Barron is inferiour to ane Earle: And that *Baro*, commis fra the Greek word *βαρος, gravis*, wise, grave, prudent, and discreit: Bot contrariwise, *Peirius Pitheus, Lib. 1. Adversariorum* writis, That *Baro* signifies ane baird, fuile, or unwise man. Quhais opinion, I cannot gudly approve. *Baldus in Cap. Innotuit de ejctione, definit Baronem, ut sit quisquis merum visumque habet imperium in aliquo castro vel opido, ex concessione principis*. In this Realme he is called ane Bar-

*Comes  
Martialis.*

ron,

ron, quha haldis his lands immediatly in chiefe of the King, and hes power of pit and Gallous.

*Barratrie*, or *Barrataria*, ane kind of *Simony*, specially in obtaining the right of benefices. *Socius reg.* 55. *Baldus in consilio* 21. Part. 5. For all men passand to *Rome*, and byand benefices committis *Simonie*, and ar called *Barratours*. Be quhom *Barratrie* is committed, and quhit is the paine theirof, it is manifest be the acts of Parliament. It is ane Italian word, and be the Italian interpreters of the Civill Law, *Barrataria*, is quhen ane Judge corrupted be buddes (lik as gold and silver) judgis wrangeously, *Petrus de Raven. singula.* 156. and swa doing sellis Justice for meid and profit, and makis his office ready to be bought be him; quha will give maist theifore. *Angel de Syndicatu.* Nu. 4. For the quhilk crime, he may be deprived, and sharply punished. *Bartol.* 1. l. *Mania* 13. sect. 1. Nu. 3. *de annu. legat.* And likewaies *Barratours* in the Lawes of England suld not be suffered to make sute, or to give judgments, or pronounce sentence or domes, *An. 3. Edward. 1. cap.* 32.

*Bastardus*, in French *Bastard*, ane bairne unlauchtully gotten outwith the band of Mariage. Quhilk word is barbarous, and (as I suppose) na reason can be given quhairfore it is so called: But *Gabriel Paleotus*, in his buik *De nothis spiritibusque filiis.* c. 18. alleagis it to cum fra *Baro*, quhilk signifies an huire, or common woman. Bereason that bastards are commonly gotten and procreat with ilk weemen: in Greeke he is called *νόθος*, for *in nobis* signifies that part of the fathers gudes and geare, quhilk be the Law of the *Athenians*, leasumly micht be given be the father to his bastard son, extending to the summe of *mille drachme*, and therefore *νόθος* was called all that was not trew or lauchfull, as writis *Budens in Pandectas*. And swa commis *νόθος* fra *νο*, privativa particula, & *θεος* b. e. *divinum*, teste *Snida*. Because he wants that quhilk is godly and lauchfull, that is ane honest and lauchfull birth or parentage. And swa *νόθος* dicitur qui non sit legitimus, to the quhilk there is na proper Latine word correspondent, as *Quintilianus* testifies, lib. 3. c. 6. Nevertheles, he is commonly called *Spirius*, for in l. 1. ff. *Spirius*, de posses. contr. tabul. *Spirii* dicuntur & a *in* *noceat* h. e. *satione*, vel *seminatione*, eaque *vaga*, & *promiscua*: ubi doctiores *noceant* legunt, quasi *sparsim* concepti, like as they are called *vulgò* concepti, in *adoptione*. 14. *de ritu nuptiarum*. Likewise *Spirius* was the proper name of ane ma amangis the Romans, as *Titus* or *Cajus*, & was written with twa



letters *Sp.* and likewise they quha had na certaine Father, was designed with the saids twa letters, *S.* and *P.* and swa by common use and consuetude, *Spirii dicebantur sine patre*, as writis *Plutarchus in problematibus*, becaufe their father and mother not being lauchfully married, they have na certaine father: *quia pater dicitur quem legitimæ nuptiæ demonstrant*, *sect. ff. de in jus vocand.* And it is alike to have na father, and to have incertaine father, as we say, he quha wil have mony gods, hes na God. *Postremo Blondus l. 8. Roma triumphantis, is (inquit) qui illegitimè natus esset ex concubina vel scorto contumelia causa, spirius dicitur, eo quod Sabini, muliebri pudendum appellarunt: hec ille. Inhonesto originis genere in lucem editos infami & inhonesta appellatione notare voluerunt veteres.* And that part of weemens claieths, sik as of their gowne, or petticoat, quihlk under the belt, and before is open, commonly is called the spare. As concerning the succession of Bastards, thir short rules are to be observed, conforme to the law, and practique of this Realme. First na Bastard, nor na person, not procreat and gotten in lauchfull marriage, may ony waies be lauchful aire and successor to ony of our Sovereine Lordis lieges. *Lib. 2. c. in custodiis 30.* For be the Law of God, *Ismael* being bastard, gotten upon ane bound woman

De Successione activa  
& passiva  
Bastardorum,  
Bastardus non potest esse heres.

*Agar*, nicht not be aire to *Abraham*, with *Isack*. *Genes. 23. 10.* Because all richt of succession is be reason of bluid, and consanguinity of the father side, quihlk is called, *jus agnationis*, and their foir ane bastard, quhats father is incertaine, be the Law is understand, be reason of bluid to be sib to na man, and nane to him, *Et ubi nullus est pater legitimus, ibi nulla est agnatio aut successio ratione agnationis.*

Legitimi  
bastardorum  
liberi, ipsi  
succedunt.

Secondly, the bairnes mail or female, lauchfully gotten be ane Bastard, with ane lauchfull married wife, succedis to him as righteous and lauchfull aires, in his lands, gudes and geare in the samin maner, as gif their father had bene gotten and borne in lauchfull band of marriage, *Quia filius est heres legitimus, quem nuptia demonstrant, lib. 2. c. in custodiis 30.*

Filius  
succedit  
filio  
vel filie  
Bastardi.

Thirdly, gif the lauchful bairne, mail or femail of ane bastard, succedis to him, and thereafter deceasis without lauchful aires gotten of his awin body, or without lauchful brother or sister: and lauchful testament and latter will maid be him, all and hail his lands, gudes and geare, not being disposed and annalied be him in his life time, aucht and suld pertaine to the King, be the privilege

ledge and right of his Crowne: Because, as said is, there is no right of succession in this Realme by the mother side, and the sonne or daughter of the bastard deceased, as said is, has no person lib to him by his father side: And so all right of succession ceaseth baith upon the mother and father side, *nam ratione cognitionis, quam agnationis*; the King by reason of his Crowne, is universall successor to him in his lands, gudes and geare, as *ultimus heres*.

Fourthly, an bastard being *legitimus*, or not *legitimus*, may in his liege pousty, and induring his life-time annally and dispose his lands, gudes and geare moveable and unmoveable, to quhom hee pleaseth, in the samin forme and maner, as ony person gotten in lauchful bed may doe by the Law.

Fifthly, all gudes moveable and unmoveable, of any person borne bastard, and deceased bastard, without lauchfull aires gotten of his body, and no disposition thereof maid in his time, pertaineth as escheit to the King, by reason of the right of his Crowne. *Lib. 2. c. queri autem § 1. leg. forst. c. si bastardus § 1. de judic. c. si bastardus § 4.*

Sixthly, any bastard being naturalized or *legitimus* by the King, under the great Seale, hath the practique now used and observed, hee allanely power to make testament, dispose his moveable gudes and geare, and nominate executors, conforme to the Law of this Realme: by the quhilk Law, no man lauchfully, or unlauchfully gotten or borne, may make any disposition in his testament, bot of his moveable gudes allanely. For no man upon his death-bed, or in his latter will, without consent of his aires, may dispose any part of his heretage, *lib. 2. c. Potest. 2. c. Cum quis 36.*

Seventhly, gif any bastard *legitimus* and rehabled in his life-time, maketh any testament lauchfully: The King thereby is excluded fra all right and intromission with his moveable gudes: Bot gif he maketh any testament quhilk is null and unlauchfull: Or gif he maketh any testament, The King by reason of bastardry, succeedeth to him in all his moveables, and unmoveables: For in this case, the effect and power of the legitimacion ceaseth, and hee no operation.

Achtly, quhen any bastard deceaseth without any lauchful testament maid by him, or not having aires lauchfully gotten of his body, The King by his Thestuarie, or any other having gift and power fra him, may intromet with all the moveable gudes quhatsoever,

*Bastardus res suas alienare potest, tanquam liber earum dominus. Fiscus succedit bastardis.*

*Bastardus legitimatus potest testari legitime.*

*Testamentum illegitimi factum non excludit fiscum.*

*Bona mobilia Bastardi fisco inferuntur.*



sumeuer, pertaining to the Bastard, the time of his decease, and not disposed be him in his life-time, as escheit pertaining to his Hienes, be reason of his Crowne and kingly power.

*Bona immobilia de rege tenita, si co inferruntur.*

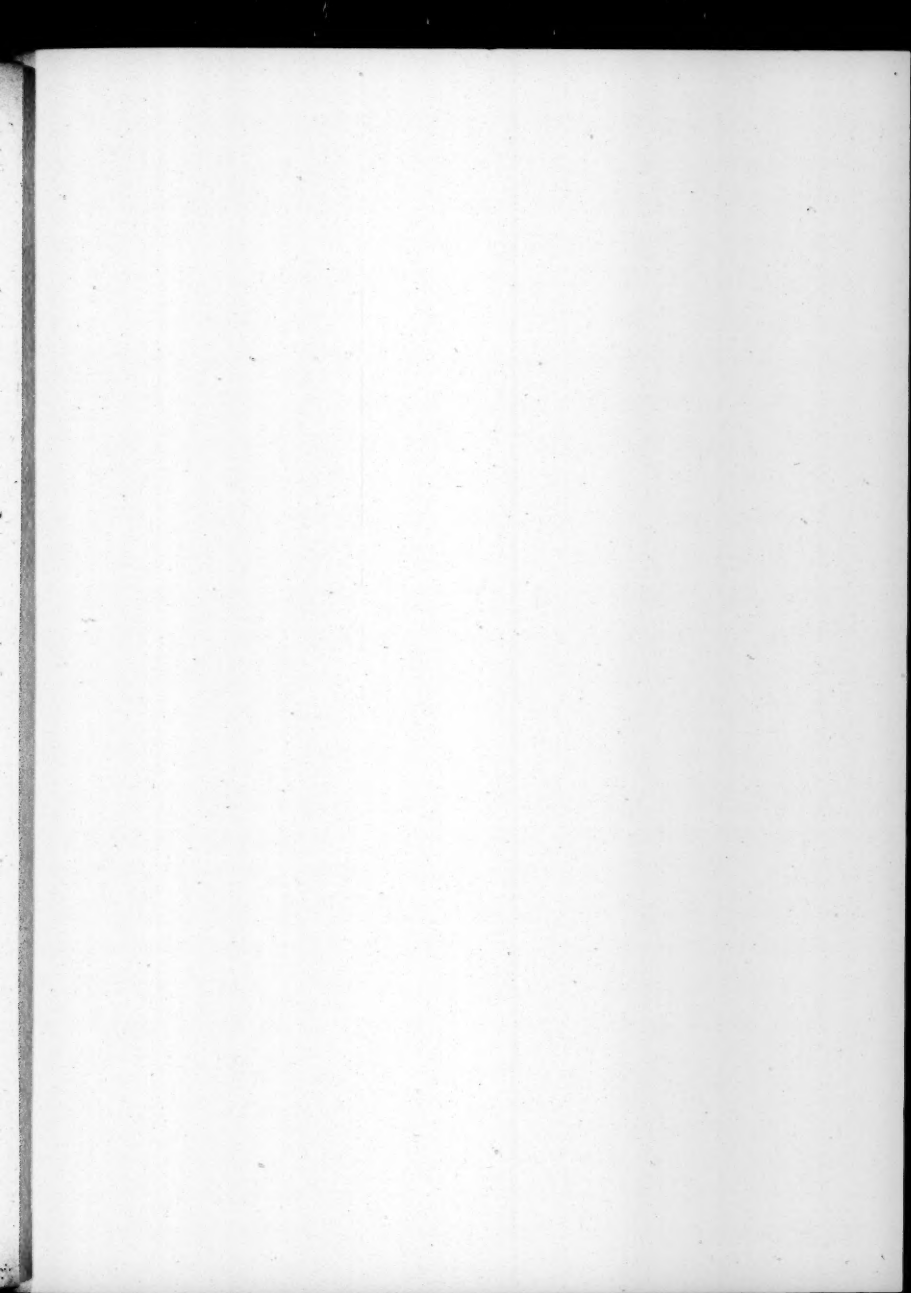
Ninthly, sik-like all lands and tenements pertaining to the said Bastard, the time of his decease, and halden immediatly of our Sovereine Lord in chiefe, after his decease, pertainis to the King, and the property thereof, be decease of the Bastard, and be reason of escheit of Bastardry, belangand to the Crown, is consolidat with the superiority in the Kings person; in sik form and manner, as gif the Bastard in his life-time had maid resignation thereof in the Kings hands.

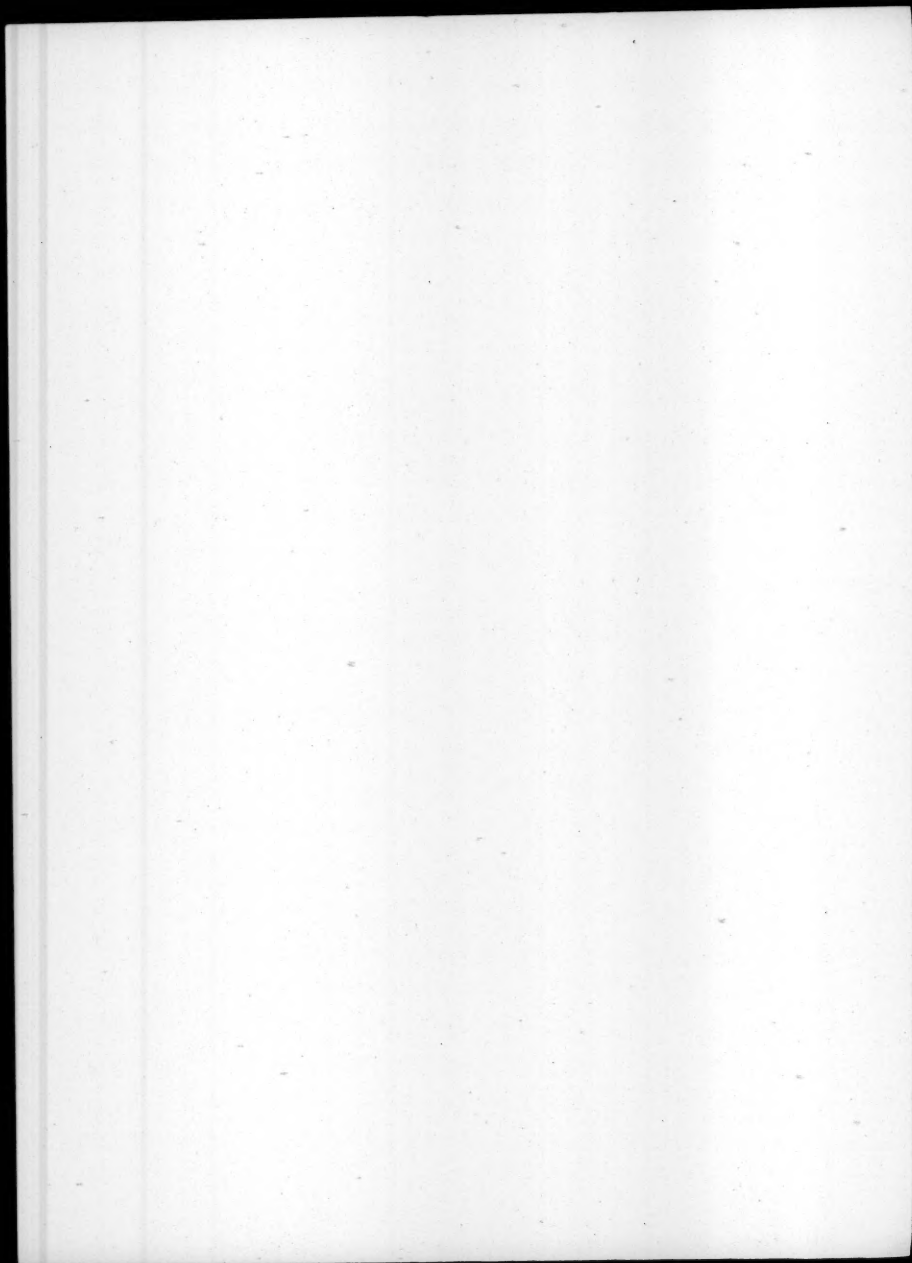
*In aliis bonis immobilibus Rex habet ius presentationis.*

Tenthly, concerning lands and heretage, pertaining to ane Bastard, not halden of the King, bot of ane vther superiour, Spiritual, or Temporal: the King hes right of presentation: Be the quhilk, after the decease of the Bastard, he may present ony person quhom he pleasis, as heretable rennent to the Bastards immediat superiour, be his letter, under the quarter Seale, bearand. That forsameikle, as N. born Bastard, and decessand Bastard, without ony aires lauchfully gotten of his body, and na lauchful disposition maid be him in his life-time, had the lands called B. pertaining to him in heritage, halden immediatly of the said superiour: And his Hienesse being willing not to preiudge the superiour, anent his superiority: Therefore presentis to him sik ane man, charging the superiour to receive him, and give him sik infestment of the lands, as the umquhile Bastard had of him of before.

Berthinssek, or Birdinssek, Be the law of Birdinssek, na man suld die, or be hanged for the thief of ane scheepe, ane weale: Or for sameikle meat as he may beare upon his back in ane seck: But all sik thieves suld pay ane schiepe or ane cow, to him in quhais land he is taken: And mair-over, suld be scurged. *Lib. 4. c. De Turpannan sica. 14. Quoniam attach. c. per constitutionem 44. Ass. Reg. Da. c. 1. In fine. Stat. Alex. c. de Berthinssek 19.* Quhilk is conforme to the Civill and Canon Law. *Nam omnia delicta & malicia estimantur voluntate, & proposito delinquentis. l. qui iniuria 53. In prim. ff. de furtis l. 1. ff. de Var. & ext. Crim. Ideoque si quis necessitate famis secunda egestate, aut paupertate coactus, rem alienam contrectat, quia non adest animus furandi cupidus, excusari potest e. si quis. Extr. de furi. Non enim factum, sed causa faciendi inspicitur. Verum 39. ff. & vulgo dici solet, necessitatem non habere legem. L. Non solum s. ff. de excusationib. Tutor.*

*Bluidueit,*





*Bludweir*, *verge*, In English is called *Injury*, *vel misericordia*, *Amercement* for wrong or injury of blood. For they that are infected with Bludweir, has free liberty to take up an unlaw or amerciament of Court, for effusion of blood. And to hold Courts thereupon, and to apply the same to the lawfull utility and profit. *Bludweir* and word made commonly used in Charteres and infeftments; then weill understande in the common practique of this Realme. For in strife or twilzie, quhairin happins effusion of blood; the one party is fyled be ane assise of the blood; and the other partie is convict of the wyte, quhairthrow, ewa unlaues are payed for ane fault or crime, cōtrarie to the rule of the law, *Pro una delicto non debet esse infamia* *foris factum* *vel misericordia*. And in auld authentick buiks of the Lawes of this Realme: Like as Flyt-werte, is ane amerciament for flyting or ane verball injury. *Swa* *Bludweir* signifies liberty, quhairbe ane is free and quit of payment of unlaues or amerciaments for effusion of blood; and has power to hold Courts thereanent; and to take up and apply the same to his awin profite and utility, being infected with Bludweir. Yet neverthelesse, he may not take ewa unlaues therfor; bot ane allanerly. For *Bludweir*, *est infamia verbum iustitiae sed compositum*, signifying ane paine and unlaw or amerciament for shedding or effusion of blood. *Quhill* paine, in our auld lawes, is liquidate and modified by payment of ane certaine number of Kyngs was commonly used and wont for their drymes in those dayes, and that conforme to the estat of the person receiver of the injury. *Libor. x. Sanguis Cyti*. In the quhill place, it is manifest that the *Bludweir* or unlaw, for effusion of blood of ony man, under the bult of his end (*sub anhelum*) is lesse be the thrid part (*tertia parte minor*) then the unlaw or bludweir abone his end or mouth. For it was esteemed ane greater injury, to breake ane mans head, or shed the blaid of his head, either before in his face, or behinde; then in ony uther inferior part of his body: because, the head is the principall and chiefe part of ane mans body, quhairin the judgement and memory makis residence.

*Bea Patria*, *Lib. s. c. §. 12*. An assise of country-men, or of gude nychtbouris. Sometimes it is called *Assisa bene patrie*, quhair twelve or thair men are chosen fush of ony part of the countie, to passe upon a lise, quhair called *Juratores*, because they shuld swear judicially, in presence of the party, ane soleme aith.



ony gear, except the seller thereof finde him ane lauchfull pledge; quhilk is called Borgh of Hand-hald. And gif it fall happen, the guides sauld and bocht, to be challenged be ane vther, and the said pledge cannot finde him, for quhom he is pledge, to relieue him of the said challenge: He fall pay to the Challenger the triple of the thing challenged, and aucht Rye to the King as ane unlaw. And gif he quha fand the said pledge, relieuis him not from the said damage, he fall be banished the Realme. *Lib. 1. c. Statuit etiam 19. St. Alex. c. Statuit etiam 13.* For generally the Cautioner hes guid aſſion, contrair the principall, for his relief. *Lib. 3. ca. 1. In fine.* And sic-like within Burgh, the like caution suld be found in bying and selling of all merchandice, except meat and drinke, and vther things of small consequence. *Leg. Forest. Nullus 48. Et de jure crebilli venditur per evittionis praestationem, cogitur servare emptorem indemnem, eodem modo ac si dominum nactus esset. L. exemplo. N. in prin. ff. de actionibus emp. vld. Hambaldare. vld. Hamsucken.* Mal-rover, gif ony man becommis ane furth-cummand borgh for ane vther, to make him furth command as ane haill man, it is sufficient, gif he produce him personally, haill and sound before the Judge, in lauchfull time and place. But gif he be pledge for ane vther, that he fall be answerable as law will, heemoun satisfie for him in Court, and to the party to quhom he is pledge, in all things, as the principall suld have done. *Quoniam att. sc. c. ubi aliquis 11.*

*Borhna, Butthna, Bothena. L. 4. c. Si quis natus 30. appearis to be ane Parke quhair cattell ar fed and inclosed, ut in lib. M. Alexandri Skenei, fratris mei germani, quondam In Supremo Senatu Advocati.* Quhilk is confirmed be Hector Boetius, l. 7. c. 123. No. 35. *Cum scribitur maritima Thessalia pars a vestigali, quod Regis procuratoribus ab incolis in annos pendit solitum erat, cum gregum multitudine abundanti, Butthquaria appellata: est enim, quibain, idem quod vestigal, prius in Scotorum lingua: & Bath, ovium collectio: hac ille.* And it is manifest, that the place in the quhilk the cows ar inclosed quhen they ar milked, is commonly called ane Bucht. Sic-like *Aulus Gellius, l. 1. ca. 1. writis that Italy is so called, a Bubus, because Βουας in the auld Greek language, signifies Oxen, of the quhilk there was great abundance and multitude in Italy, quhilk is confirmed be Paulus Vanderskides, utherwales called Paulus Diaconus. lib. 2. c. 24. Italia (inquit) ab Italo, Siculorum dace, qui eam antiquitus invasisit: sive ut hoc Italia dicitur, quia magni in ea boves, h.*



*Itali habentur. ab eo namq. quod est Italus, per diminutionem, una li-  
tera addita, altera mutata, vitulus appellatur. Item Bothena, S. W. l.  
c. 11. Signifies ane Bartrie, Lordship, or Schireffdom, as is mani-  
fest, Ex lib. Scenens. c. 99. Asssa Regis David. Et Dom. Bothena, is  
the Lorde of the Barrony, land, or ground. Leg. Port. ca. 1. in libro  
M. Wilhelmi Skenes, fratris mei Commissarii Sancti Andree. p. 149.  
c. 79. Item, It is statute and ordained, that the Kings Mute, that is,  
the Kings Court of ilk Bothene, that is, of ilk Schireffdome, sall  
be halden within fourty dayes. Ass. Reg. Da. c. 6. in Libr. quodam  
M. Roberti Carbraith. l. C. Doltissimi.*

*Bote, Ane auld Saxon word, signifies, Compensation, or Satis-  
faction: As man-bote, theft-bote, And in all excambion, on crof-  
sing of lands, or geare moveable: The ane part that gettis the bet-  
ter, givis ane Bote, or compensation to the uther. Quhair of there  
is ane example in scil. Sifamila, Instit. de Offic. Iudic. & in scil.  
quadam actiones. Instit. de actionibus. Ane man-bote is assuiment  
for the slaughter of ane man, Kin-bote, for the slaughter of ane  
Kins-man. Theft-bote, is quhen ony man agrees with ane thief,  
and puttis him fra the Law. l. ac. 5. 12. l. ul. Parl. 1. c. 2. Or quhen  
ony sellis ony thief, or finis with him for theft-dome done, or to  
be done. l. ac. 1. par. 13. c. 137.*

*Bovata terra, Ane oxen-gate of land. Lib. 4. c. Si quis fide-  
rit 23. Quhilk in sum buikes is wrangously written Davata ter-  
ra. The Lords of the Session be their decreet. 18. Julij. 1541.  
esteemed and modified ane Oxen-gate of land to twenty shillings  
in all dewties zeirly. Bot in this I find na certaine rule: For some  
land is mair fertill, and uther mair barren: Alwaies, ane Oxen-  
gate of land, suld containe threttene aicker; And four Oxen-gate  
extendis to ane pound land of auld extent, conforme to the de-  
cretes given be the Lords of the Checker. 11. Mar. 1585. Pa-  
trick Mony-penny of Pitrig, and uthers, contrair Adam, Bishop of  
Orkney. And at the instance of John Creichtoun of Brunstoun, con-  
trair John Fensoun.*

*Breve, Ane commoun word in the Lawes and practique of  
this Realme: And also in the Civill Law. l. 1. c. De exactorib.  
Tribut. l. 16. l. ul. c. de conveniend. fisci. Debitorib. Lib. 10. Quhair,  
in the Glosse, it is called Schedules, ane schort compendious write;  
Like as all Brieves are conceived in few words, and at allwa called  
Brevicula, And in Rubr. C. de sentent. ex periculo repitand. Alciatus*



*lib. prim. disponsit. cap. 21. Et Iacobus Cujacius. Antonio Concio repugnante, legunt ex Breviculo, id est, ex scripto breviori formula concepte.* Because the sentences and decretes of Ordinar Judges, shuld be red and pronounced in writ. *Breve testatum*, is ane writ or instrument, subscribed be ane publick Notar: Or be twa witnesse, quha ar called, *pares curtis, vel curie. k. c. Conuassalli*: Quha baith haldis their land of ane superiour. *Cujacius lib. 1. & lib. 2 Tit. 3. De feud.* In the auld Lawes of this Realme, diuerle and findry Brieves hes bene used and wounte, quhair of mention is maid, *Quo. attach. c. de breuibus 31.* And in findry uther places, Bot seven formes of Brieves allanerly, ar now commonly used. The first, the Brieve of Mortancestry. The second, the Brieve of Tutorie: The third, the Brieve of Idiorty: the fourth, the Brieve of *Terce*. The fifth, the Brieve of Line, or alienation of lands and tenements within Burgh. The sixth, the Brieve of division. The seventh, the Brieve of perambulation. Quhair of the three Brieves ar answered and retoured again to the Chancellary and the uther four receivis na retoured answer. The cause of the diversity dependis upon the forme of the Brieves direct furth of the Chancellary. Because the three first Brieves in the end of ilk ane of them containis ane commande to the Iudge to quhom they ar direct, to send back againe his answer to ilk point of the brieve. And the remanent four brieves hes na sik command, and therefore requirils na answer.

*Breve de divisio faciendis*, Is the brieve or summons of cognition, or molestation anent the property and commony of lands, anent the bounds, meithes, and marches their of betwixt Neighbour and Neighbour: Quhilk be the new Act of Parliament, shuld be decided be ane Assise, before the Schireffe and his deputer. *1ac. 6. Parlia. 11. 9. 42.* It may be like-waies called the Brieve of division, or of perambulation, or ony uther concerning the marches of lands. *Lib. 2. c. dicitur 74.*

*Breve de nova disseisina. Quo. attach. c. de breuibus 31.* Is the brieve or summons of ejection or spuilzie: For *disseisor*, is he quha ejectis ony man furth of the possession of his lands, without ordour of the law, as writis *Iohn Rastel. verb. disseisor*: And *nova disseisina*, signifies, alsua spuilzie, maisterful, wrangeous, or violent spoliation and away-taking of moveable gudes and gear. *22. March. 1547. William Lindsay contrair Alexander Chene. Molinera in stilo curia Earlia. part. 1. c. 10. c. 18.* affirmis that *nova disseisina*, is that quhilk

in the Civill Law, is called *interdictum unde vi*: And comprehend also *interdictum uti possidetis*. And in the Law of Normandy, lib. 8. cap. 3. It is called, *interdictum recuperanda possessionis*, vid. disseisin.

*Breves* pleadable, *Breve placabile*, ar all sik breives, quhilkis ar persewed and defended be ane ordinar forme of proces before ane competent Judge, at the instance of ane persewer against ane defender. For it is statute, that na man sall be ejected furth of his land or tenement, quhairin he alleagis him to be vest and sailed, bot be ane brieve pleadable, or sum other brieve accordand thereto, and that the said person be lawfully summoned to answer upon his heritage, at ane certaine day and place: *Stat. 2. Rob. Br. c. Item*, 25. Quhilk is conforme to the acts of Parliament: *Jam. 3. p. 6. c. 41.*

*Breve de recto*, the brieve of richt was used before the Justice generall and his deputes in decison of the ground, richt and propriety of lands, and reduction of infestments, the quhilk forme of processe is declared at length, in the first buike of *Regiam Majestatem*, and in *Quo. attach. c. de brevibus* 31. and be the Lords of Councell and session is decerned not to have bin, nor zit to be thir mony zeires in use, and therefore they find themselves, conforme to the institution of the Colledge of justice, and jurisdiction granted to them, to be judges competent in all causes of heretage, viz. *Februar. 1542. Patrick Weemes contrait Forbes of Reres.*

*Breve de morte antecessoris*, the brieve of *Mortuanserie*. lib. 2. c. *generalia*, 25. Or the brieve of succession, or of consanguinity, *de iudicib. c. Natura*. 158. Or *breve inquisitionis*, *Stat. Rob. 3. c. 1.* Or the brieve of inquest. *Jam. 4. p. 6. c. 94.* (Albeit all breives are inquisitions, because they ar determinat *per inquisitionem patrie*, *de iudicib. c. cum quis* 152.) or the brieve of recognition, *breve recognitionis*, *Stat. 2. Re. Br. c. Item quia* 23. It is the most necessari, common and profitable brieve or inquisition that is used be the lieges of this Realme, quhairby ane desirist to be served and retoured, as narrest and lauchfull aire to his father or other predecessour. This brieve is raised furth of the Chancellary and persewed be ane appeirand aire of perfite age, for recovering of his lands furth of his superiours hands: togidder with all the profits and commodities theirow. *Leg. Forest. c. & si heres* 71. The rayser of the brieve at the samin time suld find caution to persew and follow

follow the brieve and his claime, conforme their to. *lib. 3. c. 1. generalia 25.* Be the auld law of this Realme, the Justice generall and The Judge. his deputies havand jurisdiction not only in criminall causes, bot also in civil actions, was judge competent to the service of this brieve. *Quon. attach. c. de brevibus 31.* Bot now the samin is served before the Schireffe, Steward, Bailly, or any uther Judge, havand power and jurisdiction. *Stat. Re. 3. c. 1.* Or before Judges delegate be commission granted be the Lords of Counsell, for the serving of the said brieve. *Iam. 5. p. 6. 82.* The brieve suld be proclaimed upon fiftene dayes warning *exclusive*. That is, upon fiftene dayes not comptand the day of the service of the brieve to be ane of them, be sik persons as hes power be their office or commission to proclaim the samin, in ane lauchfull, publick, and convenient place: That is to say, in the principall Burgh of the Schirefdome, Bailly, or uther place quhair the lands lies; at the mercat-croce thereof, and in mercat time of day, before twa witnesses at the least, to the effect that the knowledge thereof, may cum to the audience of all parties, havand or pretendand entres theirin till, and thereafter the brieve suld be lauchfully execute and indorsate, be the Officer, executor thereof, and stamped with his seale or signet, before the samin be presented in judgement. *Stat. Re. 3. c. 1. Indorsation.*  
*Iam. 1. p. 91. c. 127. Iam. 4. p. 6. c. 94. Iam. 6. p. 11. c. 60. in registro 16. Nov. 1537.* It is necessar and also lesum to the Schireff, or any uther Judge of this brieve, to summond certaine persons maist worthy within his jurisdiction to passe upon the assise, and that upon the space of fiftene dayes, or zit gif he pleasis, upon ane schorter time; and gif they be present in the Tolbuth unsummoned, it is lesum to the Judge to compell them to passe upon the said inquest. *Iam. 4. p. 6. c. 74.* and all sik persons summoned and not compeirand, ar charged at the barre and disobeyand, suld be discerned in ane unlaw and americiament of Court: The brieve beand lauchfully proclaimed, and the persons of inquest like waies summoned, and the day of compeirance being cum: the persewer exhibitis and presents the brieve duly execute and indorsate, in judgement to the Judge, and desuris him to cause the samin be read, and put to the knowlege of ane assise. Thereafter the Officer, executor of the said brieve, be his great aith, sall sweare judicially, that he hat execute the samin brieve, conforme to the inhibition thereof in all points, and the witnesses insert therein till, for  
alt.

Proclamation.

Indorsation.

Assise suld be summoned.

Production and verification of the Brieve.

also mak faith, that they heard, saw, and by-stude; quhen the said  
 Defender. Officiar did execute and proclaim the brieve, in sik manner, as is  
 contained in the indorsation thereof: The brieve and indorsation  
 being swa verified, gif ony person havand entresse, compeiris to  
 defend and object against the brieve, he suld have inspection there-  
 of, gif he desiris the samth: And gif he proponis ony relevant ex-  
 ception, declinatour, dilatour, or peremptour: He thereby callis  
 and annullis the brieve, either untill ane new brieve be raised a-  
 gaine, or *simpliciter* in all times cumming: utherwaies, gif he hos  
 na reasonable exception or defense to stop the brieve, or gif he  
 compeiris not, the brieve sall passe to the knowledge of ane assise,  
*Quoniam attach. c. de brevibus. 13.*

Ane Assise  
 is chosen.

Then certain lauchfull men maist worthy, and quha best knowis  
 the verity, to the number of thretee, or fiteene, are chosen in  
 judgement, in presence of the persewer and defender: Or in pre-  
 sence of the persewer, and in absence of the defender; knawin to  
 have entresse, and being lauchfully summoned, and nocht compeir-  
 and, to the said election, to object against sa many persons, as he  
 may leasumly stop be the Law, to passe upon the Assise. For like  
 as it is necessar, that he be anis summoned: Swa gif he compeiris  
 nocht, being lauchfully summoned, the brieve suld receive Procelse,  
 and passe to the knowledge of ane inquest, at the desire of the per-  
 sewer, in absence of the defender. *Lib. 3. cap. Generalia. 35. ff. Reg.*  
*Da. c. sciendum est. 44. lib. 4. c. Si petens. 57.* Quhilkis persons, na  
 lauchfull objection maid against them, suld be received, sworne,  
 and admitted: And therefore are called *Juratores. vid. Bona pa-*  
*tritas.* And gif they or ony one of them be sworne and received, the  
 Judge may continue the brieve to ane uther day, gif he pleas; and  
 as necessity requiris: Utherwaies the continuation thereof is nocht  
 leasum, without the consent of the party, after the claime is given  
 in; And inquisition taken in the cause, gif the persons or inquest,  
 being weil counsellid and advised, delivers and servis *Negative.*

The claime  
 serves Ne-  
 gative.

in favours of the defender, and findis the persewer na waies nearest  
 and lauchfull aire to him quha dyed last Veste, and said in the  
 Lands acclaimed: In that case, the defender dois bruike and joyis  
 the possession of the said lands, and the persewer is debarred and  
 schuld there fra: Bot gif the assise delivers and servis *negative,*  
*as said is, or affirmative,* in favours of the persewer against the de-  
 fender, conforme to the clayme in all poynts: This their answer

service af-  
 firmative.

to all and findry the points of the brieve, sealed with al their seals, or of the maist part of them, togidder with the seale of the Schiriffe, or uther Judge closed, and the brieve inclosed therein (to the effect the same may be conferred with the answer) is sent backe and retoured to the Chancellary, conforme to the Kingis command, contained in the end of the brieve. *Stat. Rob. 3. t. 1.* Quhilk therefore is called ane retour. And it is to wit, that there is twa *Twa kinds of retours.* kindes of retours or aunswers, maid be the persons of inquest, to this brieve, and retoured to the Chancellary: The ane is generall, and the uther speciall: The generall is, quhair na landes or tenements are specially acolamed or soucht be the persewer of the brieve: Bot only it is desired, that he may be served and retoured generally, nearest and lauchfull aire to his Predecessour: To the quhilk general claime, ane general retour is maid, be vertue quhair of, the said generall aire, hes gude richt and title to all contracter, obligations, and reversionis, and to moveable aire-schip gudes, quhilkis pertained to his predecessour, and were not discharged or disposed before his decease, in his liege poustie. And sik-like, persew and defend quhatsumever action competent to him, be decease of his said predecessour, to quhom he is served aire generall. 8. March. 1540. *James Scot, contrair Blair.* The speciall aunswer and retour is, quhen the persewer of the brieve, claimes speciall lands, and the persons of inquest gives ane particular and speciall answer to ilk speciall point of the brieve. *lib. 4. c. statuit Dominus* 45. The quhilk is direct and sent to the directour of the Chancellary, to be tryed be him, gif the samin be conforme to the direction and ordour of the brieve in all points. Here it is to be understand, that the lands contained in the retour, ar halden immediately of our Sovereine Lord the King, or of ony uther Superiour. Gif the lands bee halden of the King in chiefe, the directour of the Chancellary, commandis his Clerkes to direct ane precept, under the testimoniall of the great Seale, called the quarter Seale, in quhite Walz, to the Schireffe of the Schire, quhair-in the lands lyis, commanding him to give failing to the person retoured, or his Actournay, of the lands contained in the retour: And to take security of the mailles and dewties of the lands, sa lang as they are retoured, to have bene in the hands of the King, or his Predecessours, be reason of warde, or none-entresse, quhair of ane memoriall is made in ane buike called *Responde, vid. Responde.* Gif the

Retour.

Twa kinds of retours.

General retour and aire.

Special retour.



*Of landes  
retoured,  
halden of  
ane uther  
superiour.*

*The second  
precept.*

*The third  
precept.*

*The fourth  
precept of  
the Schi-  
resse.*

lands retoured be halden of ane uther immediate superiour then the King: The directour of the Chancellary, directis ane precept, charging the superiour to give saising to the person retoured, of all and findry the lands contained in the retour: He doand to him therefore all quhilk is oblished to do be the Law; Quhilk precept, gif the superiour disobeis, beand required personallly, or at his dwelling place to obey the samin. And for verifying thereof, ane authentick instrument reported to the Chancellary: Then the second precept, called *Meminimus*, is direct to the said superiour, beand in effect, that the King remembrand, that of before he gave command to him to give saising; quhilk command as zit is nocht obeyed, quhair of he mervailis; And therefore zit, as of before, charging and commandis the said superiour, to give saising to the person retoured, of the lands contained in the retour. And gif ane uther authentick instrument be reported to the Chancellary, for verification of the superiours disobedience the second time; The third precept, called *Furche*, is direct, commanding him to give the said saising, or utherwaies gif he disobey, the King certifies him, that he will direct his uther precept to the Schireffe to give the samin. In the execution of all thir three precepts, it is not necessary, that the superior sal be personally apprehended: But it is sufficient gif he be sa charged in the execution of any one of them. The fourth precept and charge being likewise disobeyed, and the samin obedience lawfully verified, as said is; ane precept is direct furth of the Chancellary, to the Schireffe and his deutes of the Schire, within the quhilk the landes retoured lyis. Makand mention, that the King hes given command be his uther letters, to *N. Barron* and his deutes, that he without delay suld give saising to the person retoured, or his Actornay, of the lands contained in the retour, quhilk gif he dois not, he commandis and chargis the Schireffe, to give saising of the saides landes, with the pertinents, without delay, saifand ilk mans richt. Quhilk precept being obeyed be the Schireffe, and saising given conforme theirt o; the superiour, who was three times charged of before and refused, be reason of his disobedience, tynis and foresaultis the superiority of the lands quhair of he refused to give saising induring his life-time. Quhilk superiority, sall perteine to his immediate superiour, quhidder that be the King or any uther. And after his decease, his aire being serve:1 and retoured to the superiority of the samin lands, reco-

-veris



veris the said superiority quhilk his father did tyme throw his disobedience. And sa be the law and practick of this Realme, ane superior may tyme and forefault his superiority. First, quhen he is entred and saised in the superiority, and being charged be precepts of the Chancellary, refusis to receive his vassall and tennent, served and retoured to the property. In the quhilk case be reason of his contempt and disobedience of the Kings precepts and command, he tynis the superiority, induring his life-time, without any declaratour, or decreit of ane judge. Secondly, quhen the superiour is not entred nor saised in the superiority, and is charged be the Lords letters, raysed be his vassall, to enter within fourty dayis thereto, to the effect he may enter to the property. The quhilk fourtie dayis being by-past, at the instance of the vassall, he may be decreit be decreit of the Lords of the Session, to have tynnt his superiority, and to satisfie the party grieved. *Iac. 3. p. 7. c. 57.* And in baith the cases foresaid, the vassall or tennent, shall be entred and hald of the King, or the uther immediate over-lord, to him quha contemptuandly disobeyed. Last of all, concerning the giving of saising, conforme to Brieves served and retoured before Judges, Commissioners the forme and ordour of the Chancellary abone written, suld be keiped and observed, and gif the lands retoured be halden immediatly of the King: the precept of saising suld be direct to the Schireffe and his deputes. For the Lords Auditors of the Checker, statute and ordained, 8. August. 1528. that in tyme comming, the Clerke of the Chancellary, upon the Brieve served be ane commission, shall direct the precept of saising, to the principall Schireffe of the Schire, and make the responcion upon the Schireffes head, notwithstanding the said commission, quhilk is ordained allanerly to have effect, anent the serving of the Brieve, and not anent the giving of the saising. And true it is, that all saisingis past upon precepts of the Chancellary, suld be given be the Schireffe-clerke, or his deputes, for the quhilk the Schireffe shall answer, *Iac. 5. p. 6. c. 77. Mar. p. 6. c. 34.*

*Broccarii*, In *statutis gilde*, signifies brockers, mediatours, or intercessours in ony transaction, paction, or contract. As in bying and selling, or in contracting of mariage. In the Civill Law they are called *Proxenetæ*, *l. 1. §. tot. tit. de Proxenetis.*

*Bullion*, ane French word, *Bilon*, signifies uncunzied silver or gold, quhairof silver or gold, is, or may be cunzied or stricken: sik

*Two manners of sinfall of superiority.*

*Precepts of saising given conforme to retours be commission.*

as *Ballnea*, in Greeke χρυσαιου. *h. e. aurea arena, qua ex terra effoditur* lib. i. de metallar. lib. ii. In the English Lawes it is called *Plate*. In the acts of Parliament of this Realme, it is statute and ordained: That merchands shall bring hame Bullion, quhair anent the Lords of the Checker maid this ordinance, At *Edinburgh* the tenth day of Januar. 1597. In the presence of the Lords of the Checker compeired personally, the Provest, Baillies and Thesaurar of *Edinb.* with certain merchants their nichtbors, and gave in their supplication, desiring the A. B. C. of Bullion to be explained, and an solide order to be taken with the expresse quantity of Bullion, quhilk they shall be astricted to pay presently, and in all time hereafter. After consideration quhair of, and conference had at length with them, upon the particularities concerning the said matter of bullion. The said lords of checker, with consent of the saids Provests and baillies for themselves, and their remanent nichtbors, and merchands of this Realme, hes statute and ordained, that all merchands shall inbring and pay in all time comming, for ilk last of hides, sex ounces bullion: For ilk last of Salmond, four ounce bullion: For ilk four hundreth claith, four ounce bullion: For ilk serplaith of wooll, four ounce bullion. And for all uther wares and merchandice transported be them furth of this Realme, for ilk serplaith of guds, or so meikle as pay is ane serplaith of fraucht: The said Merchant shall pay four ounces of bullion: And untill mair persite knowledge be had of the just quantity of the serplaith, ordainis twa tunne fraucht, to be compted to the sek: and twa sek fraucht to the serplaith. And the said bullion to be in-brocht to the Cuinzie-house be the Merchands: And payment to be maid to them for the samin, conform to the act of Parliament maid thereanent, upon the nineteenth day of December, last by-past.

*Ane A.B.C. of the Bullion, set downe be the Lords of Checker, for guds transported furth of the Country: And declared be them, to be conforme to the act of Parliament, and the act of Checker, above specified.*

The last of drinking Beare	ij. ounce burnt silver
The last of Wheate	iiij. ounce
The last of Beare	iiij. ounce
The last of Malt	iiij. ounce
The last of Rye, and Rye-meale	ij. ounce

The

The last of Killing, Codling and Ling	ij. ounce
The last of Olie	ij. ounce
The last of Orkney Butter.	ij. ounce
The last of Herring	ij. ounce
The last of Salmond	iiij. ounce
The last of Saip.	ij. ounce
The last of Ass.	ij. ounce
The last of Pick and Tarre	ij. ounce
The last of Lint and Hempe	ij. ounce
The last of Iron	ij. ounce
The last of Copper containing fourteene schip pund	ij. ounce
The last of Hart hides, dry hides, and salt hides	vj. ounce
The tun of Wine	j. ounce
Ilk four hundredth of Claith	iiij. ounce
Ilk sek of Scheip-skins, containing 500.	ij. ounce
The serplaith of Lamb-skins, containing 8000.	iiij. ounce
The serplaith of Cuning-skins, containing 10000.	iiij. ounce
Ilk serplaith of Fustelles, containing 4000.	iiij. ounce
Ilk sek of Gait-skins, containing 680.	ij. ounce
Ilk three chalder of Salt	j. ounce
Ilk hundredth of Daisles	j. ounce
Ilk last of Narvis, Taloun	ij. ounce
Ilk tun of Lead	j. ounce
Ilk four chalder of Coales	j. ounce
Ilk three hundredth of drie Fisch.	ij. ounce
Ilk thousand Ling or Killing in peill	vj. ounce
For ilk four cradle of Glasse	ij. ounce
For ilk sek of Wooll, cont. 24. stanes	ij. ounce
The last of Wax, cont. 24. schip pund.	ij. ounce

*Burlaw, Byrlaw.* Laws of *Burlaw* ar maid & determined be consent of neichthors, elected and chosen be common consent, in the Courts called the *Byrlaw* Courts. In the quhilk cognition is taken of complaints, betuixt nichtbor and nichtbor. *lib. 4. c.* The quhilk men fa chosen, as judges and arbitrators to the effect foresaid, are commonly called *Byrlaw* men. It is ane Dutch word, for *baur* or *baurman* in Dutch, is *rusticus*, ane husbandman. And sa *byrlaw*, *burlaw*, or *baurlaw*, *leges rusticorum*: Lawes maid be husbandmen, concerning nichtbourheid to be keiped amangis themselves.

## C

**C**adron, quhereof mention is maid in the act of Parliament, printed, Jac. 2. 4. An. 1454. c. 31. wrangeously for Cadron, because futh of the Barony of Cadron, ane zeirly pension or annuel-rent of 26. pund. 13. schil. 4. pen. was payed to the King in the Checker, as it is manifest in the Schireffe rolles. Jac. 2. 1456. and likewaies in the Schireffe-rolles. Jac. 3. 1487. In the quhilk roll, the Barrony of Cadron is called *Hamiltoun*, and in diuerse uthers rolles quhere it is commonly called the pension of *Passay*.

*Canum, Cana*, In findry Charters and infestments of lands, specially halden of the Kirk, is commonly used, for the duty and revenue quhilk is payed to the superiour, or Lord of the land, and specially to Bishops, or Kirk men, quhadder it be quheat, beir, aites, or uther kind of victuals, salt, or sums of money, as is manifest. *vlt. Feb. 1509*. The King contrair the Laird of *Balmouth*, Zit nevertheless, the lands of *Kilconquhair*, ly and within the Schireffedom of Fyfe, ar retoured to be halden be service of ward and releve, payand ane certain sum of silver, *nomine cani*, to the Bishop of *S. Andrews*: quhilk to be weill done, I cannot affirme: For it is certain, that all lands halden *nomine cani*, payis ane certaine sum of silver, or some uther certain duty, particularly expressed in the infestment. Swa gif that maner of halding be like to the halding be service of ward and relieve: of necessity the samin mon be ane taxed ward, and during the time thereof, the tenent suld pay na mair but the particular sums or duty contained in his infestment. *Canum*, appeiris to be ane Irisch word, for *Keane* signifies the head, as King *Malcolme Keannoim*, *grandis capite, vel capite*, great head: and likewaies *Kain* or *Chan*, is called tribute, payed be the servand, or subject to the Maister, as I have red in ane auld authentick register of the Bishoprick of *Dunkeld*, quhair it is called *Chan* or *Chanum*. And amangis the *Romains*, there was twa kinds of tribute: ane reall, quhilk was impute be reason of the quantity of the lands and guds immoveable, quhilk is called *jugatio, quod pro modo jugerum imponebatur*. l. 9. c. de agricol. & censu. l. 11. Ane uther person quhilk was injoynd to the person, and is called *capitatio, quod pro capite hominis prestatur*.

*cap. d. l. 9. cum l. seq. & ibi gl. l. sacrosanct. 8. c. de sacro sanct. Eccles. l. ult. c. de annor. & tribut. l. 9.* And in the Evangel, *licetne dare censum Cesari.* Theod. Beza interpretis, *licetne dare capitationem Cesari.* Aulus Gellius, and uther Latin writers makis mention of them quha was taxed by the head or pow. In Latin *capise censiti*. Sa this word *Cane* signifies the head, or rather tribute or dewty, as *Cane* fowles, *Cane* cheis, *Cane* aites, quhilk is paid be the tenent to the maister as ane duty of the land, specially to Kirk-men and Prelats, quha in the time of their greatnesse and supremacie, used ane forme and style, divers from uthers : and the auld forme of precepts, given in the time of King Robert zit extant, anent the inbtringing of the Kings rents, containis *censum, Cana, reditum, custumam*. And canage of woll or hides, is taken for the custome theirow. *Leg. navium fol. 171. in lib. M. Wilhelmi Skenei, commissarii Sancti Andree fratris mei germani.* Specially, quhilk is given for the mending and uphalding of the Haven for Schipe. *Leg. Burg. c. ult. in lib. Carbraith.*

*Campiones*, ane word commonly used in singular battell: For in auld times, quhen controversies and debates culd not be utherwise decided, bot be singular battell : the parties did either fecht in proper person, or conduced, and fied for wage uthers to fecht for them: quha war called *campiones*, because they faucht in *campo*, or in the fields, *de judic. c. 93.* Albeit sumtime they did fecht in the Kings place. *Lib. 4. c. stat. 38.* And sumtime in the common streites. *Quo. attach. c. apud Dumfries, 59. stat. Alex. c. apud 28.* from the quhilk consuetude cummis the common saying : **Do thou richt, do thou wrong, cheis thou a champion strang**; for this is the Law of Scotland. Because in all actions and quarrels decided be champions in singular combat : That party did win the cause, quhais champion was victorious, and he quhais champion was vanquished and overcome in battell, did tine his cause. *vid. Duellum, gladiatores, or duellatores, ar forbidden. l. unic. c. de gladiatoribus.*

*Catalia*, ane French word, *Cattell*, as is commonly taken in the Laws of this Realme, for all guds and geare moveable. *Lib. 2. c. cum quis 52. c. usurarii, 53. c. 55. ubi res mobiles dicuntur catalia* : and likewise in the lawes of Normandy, gudes moveable, signifies all things, as possessions quhilk may be removed fra ane place to ane uther, and commonly ar called *cattell*, as horse, claith, gold, silver, and uther sik things, *l. 5. c. l. 8. c. 1.* Like as *hereditas* or heritage signifies all lands and immoveable guds in the said law of Normandy.

*lib. 8. c. 1.* And also in the Lawes of this Realme, *lib. 2. c. 53. Stat. gild. c. item quod quicunque 19.* and *leg. burg. c. si contingat 104.* If ane burges decease without ane testament, his aire, and his cattell fall be in the keeping of the kinsmen of the mother side, called *cognati*. And his heritage in the keeping of his kinsmen of the fathers side, called *agnati*.

The paine  
of him quha  
is convict  
in battell, or  
breakes the  
Kings pro-  
tection.

*Cathorius, Catherius*, quhat it signifies, I cannot well declair, alwaies it is equivalent to the valure of nine Kyc. *Stat. Alex. c. apud. 28. Quo. attach. apud 59.* quhair it is statute, that gif ony person beis convict in singular battel, or utherwise of breaking the Kings protection or peace, he shall give to the King *viginti duas vaccas, et tres cathorios, vel pro quolibet cathorio novem vaccas.* It is true, that *cantherius* in Latin, signifies ane gelded horse: fra the quhilk cumis the Latin proverb, *cantherius in fossa*, against them quha being unable, and not qualified, seikis and cravis offices, quhair in they can do na mair service nor a horse or horse-man can doe, being inclosed within ane fowlsie: and sik like: *cantherius in porta*, quhen ane horse being led furth of the stable in the port, or in the beginning of his journey, snappers or fallis with his maister: The superstitious people esteemed that to be ane evill presage of the journey.

Cantherius.

*Carrucata terra*, ane French word, for *charrow* is ane pleuch, *aratrium*, and containis alsmeikle an portion or measure of land, as may bee tilld and laboured within zeir and day be ane pleuch. *Lib. 2. c. dos 19.* Utherwaies in the samin place it is called *hilda terra, vel hilda terra*, quhilk is ane word used in the auld Briton Lawes.

Hilda terra.

*Carta extensa, or extenta*, Ane chartour quhilk containis ane disposition of lands, with certaine meithes and marches, utherwaies called ane boundand chartour. *Quon. attach. c. Statuit dominus rex. 62. aff. reg. Da. c. statuit per consilium. 36. Stat. Wilb. c. 7.*

*Caupes, Calpes*, in Galloway and Carrilt, quhair of mention is made in the Acts of Parliament, *Ja. 4. p. 2. c. 18, 19.* signifies ane gift, sik as horse, or uther thing, quhilk ane man in his awin life-time, and liege poustie gives to his Maister, or to ony uther man, that is greatest in power and authority, and specially to the head & chief of the clan, for his maintenance and protection, like as for the samin effect and cause, findry persons payis Black-maill to thieves, or maintainers of thieves, contrair the laws of this realme. Bot in the *Iles* and *Hie-land* of this Realme, the *Calpes* are presendly payed



payed be him quhen he obliſhis him theirfore, after his deceaſe. Swa the *Herexelde* is payed be proviſion of the Law: and *Calpe* is given be ſpeciall paction and obligation, baith the ane and the uther, after the deceaſe of the debtor. Bot the *Herexelde* ſuld be firſt payed to the Landſ-lord. And ane notable oppreſſion is uſed in taking up of the *Caupe*: For gif the chiefe of the Clan obliſhis him to pay ane *Calpe*: after his deceaſe, ane *Calpe* is payed for him. And alſo quhen ony of his clanne deceaſis, ane *Calpe* likewaies is payed for ilk ane of them, be reaſon of the promiſe maid be their maifter and chiefe. *Perinde acſi obligatio facta per principem tribus, obligaret ſingulos ex tribus.*

*Cepum animalium*, the tauleh, creiſche or fatnes of beaſtes. *Leg. Burg. c. ſi quis ſcienter* 71.

*Champert*, ane bud, or gift, taken be ony great man, or Judge, fra ony perſon, for delay of juſt actions, or furthering of wrangeous actions: quhiddir it be lands or ony gudes moveable. *Stat. 2. Rob. Br. c. dominus Rex. 22.* *Champert* in the Lawes of England, is quhen the Judge be himſelfe directly, or be ony uther indirectly, mainteinis the pley, to obtaine the maintenance of the ane party againſt the uther; *John Raſtall, ver. Champert*, In the Civill Law, *palium de quota litis*, is mileaſum and forbidden, *lib. 5. c. de poſtulant. lib. ſi contra* 22. *c. mandati.*

*Chardones, vel Cardones*, Cardes quhairwith woll is carded and wrocht. *Leg. Burg. c. de parva cuſtuma* 137. fra the French word *Chardon*, from *Carduus* ane thriſill, to the quhilk the Cardes are like in ſharpnes and in multitude, or ſimilitude of money ſcharpe pykes and teich.

*Chaud-melle*, in Latine *Rixa*; ane hoat ſuddaine tuiſzie, or debaite, quhilk is opponed as contrair to fore-thought-fellony. *Iac. 1. p. 6. c. 95. vid. Melletum. vid. Fore-thought-fellony.*

*Checker*, and the forme of Comptes maid theirin, *vid. Scaccarium. vid. Ballivus.*

*Clan-makduſ de Iudic. 78.* The croce of *Clan-makduſſe* dividis *Stratherne* fra *Fife* abone the *Newburgh*, beſide *Lundris*. The quhilk had priviledge and liberty of *Girſh*; in ſik ſort, that quhen ony man-ſlayer, being within the ninth degree of Kin and bluid to *Makduſſe*, ſum-time Earle of *Fife*, come to ſpat Croce, and gave nine Kye and ane Colpindach, he was free of the ſlauchter committed be him. In the ſtanes of this Croce, I ſaw ſindrie

barbarous words and verses wiiten, quhilk here willingly I p̄-  
 termit, and bit sum of them appearis to be conforme to this pur-  
 pose; *Propter Makgidim & hoc oblatum, Accipe smeleridem super  
 lampade limpida labrum.* King David the second, gave and dispo-  
 ned the Earledome of Fife, with all privileges, & *cum lege qua vo-  
 catur Clan-makduff*, to William Ramsay and his aires, quhilk Char-  
 ter is zit extant in the Register. *Hector Boetius. l. 1. & declaris three*  
*priviledges given to Makduff, his clanne and family.* The first,  
 that the Earle of Fife suld set up the King in his Chyre, the time  
 of his Coronation. The second, that in the time of battell, he suld  
 fecht the want-gard. The thrid, that *Makdusse* and his clan suld  
 have the priviledge and richt of regality. And I saw ane auld evi-  
 dent beand, that *Spens of Wormestoun*, beand of *Makdusse* Kin,  
 injoyed the benefit and immunity of this Law, for the slanchter  
 of ane called *Kynnynmouth*.

*Clarmethen*, *Clarmathan*, the Law of *Clarmethen* concernis  
 the warrandice of stolen cattell, or gudes: for quhen sik gudes ar  
 challenged or repeated be the just awners thereof: It is statute  
 and ordained, that all persons, quha suld warrand the samin, sall  
 cum to certaine places, specially nominat and appointed to that  
 effect, and lauchfully warrand the samin. *Lib. 1. c. hac sunt loca.*  
*22. Stat. Alex. c. de Catallo. 12.*

*Clarificatio*, *Quo. attach. & p̄ quo appellat. 46.* The purging or  
 clenging of ane assise. *Assi. Reg. Da. c. 3.* *Clarificatio debiti* the clear-  
 nesse of ane debt, quhilk is notour and cleare in the selfe: Or  
 clearly and sufficiently proven and verified. *leg. Fereff. c. probat. c. 86.*

*Clep*, ane Call, ane forme of Clame, petition or libell, or certain  
 solemne words used specially in criminall caules. For sum clames  
 were conceived simply, without ony solemnity of words, as in the  
 Brieve of distres, or poynding for debt. *Quon. attach. c. de brevibus*  
*31.* ither clames were libelled and conceived in ane certaine so-  
 lemne forme, as in pleyis of wrang and unlaw, in the quhilk clepe,  
 and call, was used as ane certaine solemnity of words prescribed  
 be the Law, and observed in the practick, as quhen the persewer  
 did clepe, and call, the defender with weuth, wrang, and unlaw,  
 in harming and skaithing of him of sik ane thing, or of sik ane  
 summe of silver mair or lesse, to his great harme and skaith.

*Cowpindach*, ane young beast, or Kow, of the age of ane or twa  
 yeres, quhilk now is called ane *Cowdach*, or quoyach, quhair of  
 the

the price was threety pouldes. *Leg. Mag. M.ack. c. 4.* It is an *Irish* word, and properly signifies ane fust-follower.

*Collistrigium.* *Collistrigium*, quod collum stringat: quihlk may be called Jogge and is ordained for punishment of Baxters. *Leg. Burg. c. s. aliquo.* 21. quhair it is called ane Pillory, or Stooke, or ony band quhairwith the craig or hals is bound, as ane halfe-fang: In the Lawes of England, Anno 51. *Hen. 3.* in Latine, *Numella*.

*Conquestus.* Quhair of frequent mention is made in the laws and practick of this Realme, is different from heritage. Because heritage signifies lands and immoveable gude, quihlk pertainis to ony person, as aire and anivel fall successor to his father, or ony other predecessor: and be the civil law; *Hereditas quibz aliud est quibz successio in universum ius, quod defunctus habuit. l. hereditas. 26. de reg. iur. l. nibil. 24. de verb. signif.* And be the municipal law of this Realme, the eldest son succedeth; *Jure universali in universam hereditatem patris sui. l. 2. c. cum quis 29.* *Conquestus*, significs lands quihlk ony person acquiris and possedis private jure, vel singulari titulo, veluti donatione, vel singulari aliquo contractu libi 3. c. cum verò 28. quihlk is cõforme to the civil law, ubi questus dicitur lucrum, quod ex emptione, v. ditione, locatione, conductione, vel generaliter ex opera cuius descendit. l. c. 2. 7. cum seq. ff. pro Socio. Et de jure huius regni, conquestus cõsistit libi hominis legitimi, qui moritur de ipso suisque hereditariis, sine herede de corpore suo, gradatim ascendit: hereditas verò gradatim descendit. *Stat. Wilh. c. notandum 24. leg. Burg. c. sciendum 195; Stat. Rob. 3. c. 3. vid. Pastusius.*

And it is to be observed, that gif conquests lands, after the decease of the Conquerour, dois aniv ascend to ony person, quhairthir after happens to decease, the samin lands fall descend as heritage to his narrest aire, because conquest dois allanerly aniv ascend, and thereafter perpetually descendis to the righteous aire, gif ony be: *Quia conquestus dicitur ratione primi conquestoris, & cum transmittitur ad ejus heredem, exuit naturam conquestus, & induit naturam hereditatis.*

*Coroner.* Crowner inquires be ane inquest anent murther and slaughter, done and committed quietly. The quihlk inquisition suld be taken in the hie streetes. Or in open places, in corona populi, for the quihlk cause hee is called Coronator: or zit because the violend death of the subjects pertaines to the Kings Crowne and power. Quhairment the Crowner takis inquisition, as said is. *D. Thomas Smith, Lib. 2. c. 23. of the Common weil of*

England, Reade the English Lawes. Anno 4. Edm. 1. r. 2.

*Cressera*, or *hara porcorum*, ane cruise, or ane swines cruise. *Leg. Burg. c. Non licet. 87.* quhilk in sumauls buikes is called ane *Sye*.

*Gro*, *Croy*, in the actes of Parliament. *Iac. 1. p. 2. c. 63.* is ane satisfaction or affichment for slaughter of ony man. The quhilk the Judge suld pay to the narrest of his kin, in case he minister not the law as he suld doe. *Iac. 1. p. 6. c. 89.*

*Colrach*, sumtimes is called ane furth-cumand-borh, bot mair properly it may be called ane back-borh, or cautioner. For quhen ony havand power or jurisdiction repledgis ony man fra ane uther mans court, to his awin court, he suld leif behind him in the court, fra the quhilk the replegiation is maid, ane pledge or cautioner quha salbe bundin and oblished, that he quha usis the replegiation, sal doe justice within zeir and day in his awin court, to the partie complainand, upon the person quha is repleged. Quhilk cautioner left in the court be him, and behind him quha usis the replegiation, is called *Culrach*. *lib. 4. c. si quis in alterius 20. Quo. attach. q. 3. mod. tenetur. c. 12. de Iud. c. 28.* And gif the party complainand gettis na reason in that court, to the quhilk the defender is borrowed and repleged, he sall have regres againe to the first court, fra the quhilk the replegiation was maid, and their sall the sute and pley be ended, and the *Culrach* salbe in ane unlaw, gif the party persewed compeiris not, and he quha used the replegiation, and did not justice, sall tene his court for zeire and day.

*Curia* ane Court, quhairof sum are superiour and sum inferiour. *Leg. Male. Mak. c. 4. vide amerciamantum.* The supreme court is the Parliament, quhilk hes jurisdiction of all matters Ecclesiastical, Civill, and Criminal. All courts byand attour the ordinar persons of the Judge, the persewer and the defender suld have certaine uther persons and members, quhilks ar called *claves curie*, the keys of the court, that is, ane lauchfull Officiar or Serjand, quha suld summon, attach, and arrest the parties. Ane lauchfull Clerk quha suld informe the Assise, and the Dempster, and hes the cure and keiping of the Proces. Ane sitour quha wardis and pronounces the waird, and interlocutour of the Court. Ane Dempster or Doomester quha gives the doome or sentence definitive, conforme to the information of the Clerke or the Judge.

*Curia christianitatis*, *lib. 2. c. debet autem. 37. l. 1. C. placitum. 17.* Is called the Ecclesiastical jurisdiction or court, utherwaies, *Forum Eccle-*

*Claves curie.*

*Ecclesiasticus. l. i. c. 3. curia christianis opponitur laicali seu seculari. l. 2. c. cum aliquis 59. l. 3. prout in 23.* For unto the one pertaineth the Ecclesiastical, and to the other the temporal or secular jurisdiction.

*Curialitas*, curiality, curtesie, from the French *Curtoise*, civility, gentleness, humanity : For the law of curtesie, is one gentle and favourable ordinance or constitution, granted and observed in this Realme, and not universally kept, or used in other Countries; And therefore it is called *Curialitas Scotiae*, the curtesie of Scotland. And in the laws of England, *lex Anglia*, or the curtesie of England within the quhilk twa Realmes, and none other, this law is in use: That is, quhen any man maries lauchfully one wife, and receiveth land and heritage with her; and it happen that he beget with her one bairne, quha being borne, is heard cry and betwixt foure wals of one house; And thereafter his wife deceaseth before him, he shall bruike and possesse all the lands quhilk pertaineth to her, induring his life-time, albeit the bairne live or decease. *Lib. 2. c. cum itaque 58.* The bairne The Bairne borne, being son or daughter maill or femaill *de Indic. c. Maritagium. 127.* Quhilk law hes place in lands and heritage, lyand without burgh, halfen of the King or any other superiour : And also in lands and tennements lyand within burgh, and halden in free burghage. *Leg. Burg. c. si aliquis 44.* This law is not introduced in favors of the wife or bairns, bot is maid in favors of the husband allanerly. And therefore it is not necessar that he have any sailling, infestment, The hus-  
band. or uther richt to the lands, quhilk pertaineth to his wife heretablie : Bot only the benefit & priviledge of the curtesie, quhilk is valiable and sufficient to him induring his life-time, for bruiking and possessing of the lands, and for remooving, out-puting, and in-putting of tennents, in sik manner, as gif he were proprietar, life-rentar, tacke-man, or rentaller. And mair over, the Law of the curtesie is extended in favour of the second husband. And therefore, gif one man maries one heretrix, and after his decease, shee marries one second husband, and beareth to him one sonne, or one daughter, and thereafter shee deceaseth, her second husband aucht and sould bruike and joyis the priviledge of the curtesie, in sik manner, as gif the first husband might have done, in case his wife had deceased before him. *Lib. 2. de. cap. 58. de Indic. Cap. 127.* As concerning the estate and qualitie of the woman that is The wife. married, it is necessar that she be heretablie infest and sailled in the lands as airt to her father or uther her predecessors. Bot it is not necessarily required, that shee be one virgin and maiden; because



the curtesie perteinis to the second husband, quha maries ane Widow, as said is. Alwaies, quhiddir the wife be, widdow, the time of her second marriage, or virgin and maiden, the time of her first marriage, necessarily she suld be ane heretrix, aire, or universall successor to her father, mother, or to sum uther of her predecessors: For gif the wife hes onely richt and title to the lands and heretage, as singular successor, be vertue of ony contract, *veluti titulo emptoris*: Her husband after her decease can never claime richt to the lands, induring his life-time, be the curtesie of Scotland. 28. Jan. 1595. Robert Lundie of Balgony: contrair Robert Balfoure of Dequane.

The Bairne.

The curtesie hes not place quhen na bairne is borne in lauchfull marriage; for it is necessar that ane bairne be borne maill or femaill, quick and liveand: And for probation theirow, hec may be heard cryand, for the curtesie hes place *in puero clamante*, (or as it is writte in sum baiks) *brayand*, (queiland, or loudly cryand. For in French, *brayer*, in the Latine *vagire*, is to cry or greite with ane loud voice. Quhilk word in our language, is also attributed to Horse, Harte, and uther beaste. And gif controversie arise anent the life or crying of the bairne, it is leasum to the father to pruisse the samin by twa lauchfull men or women, quha heard the bairne *clamare*, *plorare*, *vagire* seu *brayare*. Leg. Burg. d. c. 44. The husband, father to the bairne, sall bruike the curtesie after the death of his wife, albeit the bairne being borne quick, happen to decease immediatly, or shortly after his nativity. Or albeit the bairne and the mother baith depart this life; For suppose the bairne happen to decease before his mother, and the decease thereafter, or albeit baith the bairn and the mother decease at ane time, or zit gif the bairn livis, &c the mother before the husband depart furth of this life, the husband survivand after her death, sall bruike the priviledge of the curtesie of al lands, quhairin his wife was heretably inest: 9. Jul. 1597. Martha and Empheme Mackalzeens, contrair Maister James Ward-law Advocate. Swa the substantiall heads of the curtesie are thir following: quhair of gif ony ane failzie, the curtesie ceasis. First it is required ane lauchfull marriage betuixt man and wife. Secondly, the wife suld be ane heretrix, havand *jus universale*, quhair be she succedis to her father, mother, or sum uther her forbears. Thirdly, she suld be heretably inest and saised in the lands. For gif she decease, not beand entered and saised, her husband suld have na courtesie. Fourthly, she suld decease before her husband, for sa langas she and the husband livis, he hes *jus mariti*. And after her decease, he hes *jus curialitatis*.

The substantiall heads of the curtesie.



*litatis.* Fifely, Bairnes suld be lauchfully gotten and borne, at the least ane bairne, maill or femaill, quick and livand. Last of all, the curtesie is als effectuall to the husband, tuiching waird-lands, pertaining to his wife, as the Kingis confirmation. For lands halden of the King in chiefe, and confirmed be him, fallis nocht in waird, induring the life-time of the person to quhom the confirmation is granted. He being thereby immediat tenant to the King. And likewise, gif ony man maries ane heretrix of waird-lands, and after her decease her aire is *Minor*, and of lesse age: Neverthelesse, the lands fallis not in the superiours hands, be reason of waird. Bot the husband suld bruik and possesse the samin, induring his life-time, be reason of the curtesie of this Realme. Because the richt of the waird perteing to the superiour, ceasis quhair the curtesie belangand to the husband hes place. *Pennult. Februar. 1553. George Gorstie*, contrair the Lord *Merburn*. And zit the husband being onely life-rentare may nocht sell or anaily heretably the said lands, or ony part thareof, in hurt and prejudice of the richteous aire. *Leg. Burg. c. 44.*

**D**isclamation is used in the Law, and practick of this Realme. *Clamare.*  
*Clamare idem est quod dicere, affirmare:* As *clamare aliquod tenementum, aut aliquam terram esse suam*, to claime and affirme ony heritage or lands to his awin. *Clamare aliquem dominum*, to claime, avow, and affirme ony man to be his maister or superior, to quhom he sucht service, and of quhom he haldis his lands in chief. *Disclamare* is to disclaime, disavow or deny, as to deny ane uther to be his superiour, as quhen the superiour affirmis the lands to be halden of him, and the vassall denies the samin: In the quhilk case, gif the contrair be found of verity, the vassall tines and amittis all the lands quhilk hee haldis of that superiour, and the propertie thereof returnis to the superiour, *de maritag. c. 18. Stat. Rob. 3. c. primo 20.* Quhair the auld forme and maner of disclamation is declared. Mairover, disclamation is quhen the persewer claimes lands perteinand to him, and haldin of ane superiour: and the defender affirmis the samin to be halden of ane uther over-Lord. *Lih. 1. c. folio 101.*

let. 26. lib. 3. c. tali. 18. To the decision of the quhilk controversie, baith the saids alledged over-lords suld be called. And he quha failzies to proove himselfe superiour, fall never be heard to claime the samin afterward; and the vassall being convict, tynis the land and property thereof, quhilk is adjudged to him, quha was wrangouly denied be the superiour, and is found to have richt theirtō.

3

Lib. 1. c. si verò 28. Last, the vassall tynis and forefautes his lands, gif he wrangouly denies his fev, or the condition thereof, that is, the service aucht therefore, conforme to the French proverbe, *Qui sief denie, sief port.* The reason is, because the vassall denyand his halding his maister or lands, contemnis and dishonours his maister. Bot it is necessar that the vassall or tennent deny fraudfully, that is, wittingly, *Quia vassallus feudum quod sciens abnegavit, amittit: ignoranti vero subvenitur. Quod si dubitat, dubitanter respondere potest. Cujacius, l. 4. de feud. tit. 8. & tit. 21. & tit. 39. de pœna negantis feud.*

*Disfrationare*, from the French word *Disfrerer*. In Latine *Duellare, Duello contendere*, to fight in singular battell, and commonly is understand of the appealer, or persewer, *Quia cum vadatur duellum, provocans dat vadium disfratoria dī, & defendens vadium defendendi.* Sumtime *disfrationare* is mair generally taken, for to tine any thing in judgement be forme of proces, concord or aggriance. l. 3. c. cum itaque 14. l. 2. c. fieri autem 67. Quo. attach. c. 4. Item, it signifies to prove any thing conforme to the consideration of the Court be battell, writ, or be ane assise of the cuntrie. l. 1. c. si verò.

18. c. si verò. Dominus 29. lter. camer. cap. apprens 24. Or be the aith of the party, and certaine conjuratours quhilk ar called *Sacramentales*, quha sumtime maa, and sumtime fewer in number makis faith and swearis in ony cause with ane party havand entres in persute or defence. *Cuja. lib. 1. de feud.* And in the Lawes of this Realme, *Dicitur aliquis jurare cum tertia, septima, duodecima manu.* Quhen three, seven, or twelfe persons swearis with him, quhilk in the Canon Law is called *Purgatio Canonica.*

*Dissasina, Sasina* is ane French word, and signifies possession, to the quhilk *Dissasina* is contrare, and signifies dispossession, quhair ane person beand in possession of ony lands, as mailler to his maister, or havand ony uther title thereto in writ, is wrangouly ejected and put fra the samin, without ony warning or ordour of Law. Like-wise *Dissasina* is called spuilzie, quhen ony person

Sacramen-  
tales.

Ejection.  
spuilzie.

is spuilzied violently and wrangleously of moveable gudes and gear, pertaining to him, as his owin proper gudes; and being in his possession certaine dayes or monethes. For ejection concernis lands and gudes immoveable: And spuilzie is of cattell and gudes moveable. And baith the ane and the uther is comprehended *Dissassina*, *ass. reg. David. cap. Statutum fuit. 31.* Quhilk is conforme to the English Lawes. *Henr. 3. stat. de Meriton. c. 3.* And to the Lawes of France. *Molins in styl. cur. Parl. part. 5. c. 18.* And be the auld Law of this Realme, *Dissassitor*, or committer of spuilzie or ejection, being convict thereof, suld pay ane unlaw of ten pounds to the King, *Stat. Alex. c. Stat. 7.* And may be accused criminally before the Justice and his deputies. *Jac. 5. p. 4. c. 33.*

*Disparagium*, like as *parage* is called equalitie, from the Latine word *Paritas*: Swa *disparagium* is called inequality in bluid, honour, dignity, or utherwaies, from the word *disparitas*. *Leg. Forest. c. de hered. 64. cum seq.*

*Dissolution*, ane Latine word, quhilk signifies lowfing of that thing quhilk was bound of before: and like as lowfing is contrair to binding; swa dissolution is contrair to annexation, specially in the Kings property annexed and united to the Crowne. For the samin being dissolved is maid lowf, and free of that nature and quality, that it may be annalied and disposed to sik as pleasis his Highnesse, with certaine conditions and provisions. Dissolution of the property is maid to the effect the samin may be sauld and annalied be the King, and therefore cannot be lauchfully maid in his minority, *Iac. 6. p. 14. c. 303.* For like as the King being *Minor* may not sell his property: even sa at that time, it is not lessum to him to doe any thing that may be ane preparative to the alienation theirow. And likewise, gif any man have and heritable inestment or uther richt to any part of the Kings annexed property, for the crime of treason is foresald: and thereafter be the three Estaites in Parliament, is restored in the minority and lesse age of ane King. Albeit this restitution may rehale his person: Zit is na sufficient richt to repone or restore him againe to his richt of the said annexed property. For like as ane dissolution maid in the Kings minority is null: Even swa, ane restitution maid in his lesse age, concerning his annexed property, is of nane avail: for the dissolution, and restitution are baith of ane nature, and producis ane effect, hurtfull and prejudiciall to the King, *in Registro, 18.*

The King  
in his minority,  
may not  
dissolve his  
property.

*Quhen and be quhom dissolution suld be maid.* Julii. 1497. The Kingis Advocate contrair *Alexander, Lord Hume,* and tenants of *Dumbar.* And sa it is manifest that ane dissolution of the annexed property, suld be maid be ane King in his majority, in ane Parliament, with consent of the three Estates, *Iac. 6. p. 15. c. 233.* Bot ane annexation may be made in Parliament in the Kingis minority, *Quia rex eodem modo quo quolibet minor conditionem suam potest meliorem facere.* It is leasum to the King, after the dissolution, to set his proper lands annexed, or un-annexed in few-ferme to ony of his lieges, and specially to the kindly tenants and possessours thereof, as he pleaseth. Dissolution induris onely for the life-time of the King, maker and author theirof, and quhen he deceaseth, the same ceaseth and endis. And therefore the same beand temporall, and personall, his aires and successors may not set ony annexed lands in few-ferme, be vertue of ony dissolution, maid be his father or predeceassour. Albeit dissolution be temporall, as said is, zit the lands set and disposed heretabill after the dissolution, remainis perpetuall with them and their aires, to quhom they are disposed, after the forme of the conditions, contained in their infeftments. And swa the alienation and disposition lauchfull maid, is perpetuall, & *transitoria ad heredes*, albeit the dissolution be temporall and personall, as said is. The dissolution expyrand and ceasand, be the decease of the author thereof, as said is; All the lands annexed of before, returnis againe to the forme and nature of the annexation: Sa that the same may not be set in few-ferme, nor annalied be the King, succeedand to him, quha maid the dissolution, untill ane new lauchfull dissolution be maid thereof be himselve: In respect that all annexations of their awin nature are perpetuall; and albeit, they may be interrupted and stayed, for ane certaine space, be ane dissolution; zit after the end thereof, the annexation dois quicken, revive, and walken as it were out of sleepe, and returnis to the awin perpetuall nature, and swa remainis untill ane new dissolution be maid.

*To quhom may the King set his property. Dissolution is temporall.*

*Disposition of lands dissolved, is perpetuall.*

*The dissolution being expired, the annexation begins to quicken, and revive.*

*The King may set his property in few-ferme allanerly.*

The King, after ane dissolution, may set his lands in few-ferme allanerly, and not in blench, or *nomine alba firma*, nor be service of ward and reliefe, or utherwaies, bot in few-ferme, as said is. *Iac. 6. Parlia. 15. cap. 234.*

The King may not set his lands in few-ferme, except the same be done with expresse augmentation of his rentall: That is, his gresssumes, customes; burrow-mailes, *fermes*, *martes*, *mutton*, *pultry*,

poultry, avarage, cariage, or ony uther dwties and service: Quhilk is not onely manifest in the alienation of the annexed propertie: Bot likewise suld be observed and keiped in the disposition of the un-annexed property. For it is certaine, that the Kings of this Realme, the time of their Coronation, makis faith solemnely, that they sall not annaly, transfer, nor dispone the richt and rents of the Crowne: As it is statute be *David* 2. 6. Nov. 1357. And sa as the King may not sell the richt of the Crowne, na mair may he annaly the rents thereof, quhair of the un-annexed property is ane part. Mairover, albeist ane dissolution is not necessar in the alienation of the un-annexed property (because that quhilk is not bound, requiris na lowfing) zit in al dissolutions maid be Kings of this Realme, expresse mention is maid baith of the annexed & un-annexed property, to be set in few-ferme, for augmentation of the Kings rental, quhairby it is certaine, that the ane, aswell as the uther, being set in few-ferme, cannot be disposed in diminution of the rental. And concerning that quality and condition, expreed in the forme of all dissolutions; the un-annexed, and annexed property are of like nature: *Et in hoc casu pari jure censentur*: Sa that neither the ane, nor the uther, may be disposed with diminution of the rental, utherwise the mention of the un-annexed property, in the acts maid anent dissolution, were superfluous. Thir are the substantiall conditions, expreed in the dissolutions of the property, maid be the Kings of this Realme, quhair of, gif ony ane be not observed, the alienation and disposition maid after the dissolution, is null and of nane avail. *Iac.* 6. p. 15. c. 236. By and attour, the forme of dissolution abone expreed; It is leasum to the King, with adviſe, deliverance, and decreet of the haill Parliament, and for great, seand and reasonable causes concerning the weill-fare of the Realme: First adviſed and digestly considered be the three Estaites; To sell, annaly, and dispone the Kingis annexed property. *Iam.* 2. pag. 11. cap. 41. *Iam.* 5. p. 6. c. 84.

*Dos* hes twa significations, First it signifies that quhilk is given to the husband with the wife, be reason and in contemplation of marriage. In the Civill Law is called *Dos*, in our municipall law, *Maritagium*, Tocher-gud. *Lib.* 2. c. *Dos autem* 19. Secondly, *Dos* is taken for that gift and disposition of lands and tenements, quhilk ane man givis to his wife, quhē he maries her at the Kirk-dure, or in

*Maritagi-um.*

Antidos.

the face of the haly Kirk: **Quhilk** aucht and suld be ane reasonable thrid part of all and haill the tenement of land, quhilk the man or husband hes the time of the desponsation or mariage, *Lib. 2. c. Dos autem. 19. c. 30. lib. 4. c. 4. 49. Stat. Alex. c. 8. de Indic. 163.* And is given in recompensation of the tocher, payed be her, or in her name, to her husband: And therefore is called *antidos*: *Cornel. Tacit.* callis *Dos* that quhilk the husband gives to the wife, and not that quhilk the wife gives to the husband. *Livius lib. 3.* callis it, *munus nuptiale*. In France it is called *Dotalitium*, or *Doarium*. It is given to the woman, to the effect that after the decease of her husband, she may susteine and nourish her selfe, induring all the dayes of her life-time: Therefore it is called *Vitalisia*. *Morganaticum* from the Dutch word *Morgengab*, morning-gift, is ane kinde of dowrie, in the second signification, and signifies the gift of gude moveable or immoveable, quhilk the husband gives to the wife, the day or morning after the mariage, and commonly is used in the Dutch lawes, in *speculo Saxónico*, & *Landrecht*, in Greeke *προβόλον*, in Latine *maturinale donum*. *Cujacius lib. 4. de feud.*

*Dotalitium,*  
*Doarium,*  
*Vitalisia,*  
*Morganaticum.*

*Duellum*. *Duorum bellum vel plurium*, singular battell or combat: vide *Campiones*. Noble persons, or landed men, may fight in proper person, or beuthers in their name, quha ar called *Campiones*. In Latine, *Duellatores*. Specially, sik as are their awin bondmen or tennents, quha in body and guds ar under their Maisters protection and mainteinance: And therefore suld hazard and employ the samin in the defence of their Maisters honour and actions. Bot husband-men, ignoble, and unlanded-men, suld fight personally, and not be *Campiones*. *Aff. Reg. cap. Statutum fuit per legem. 32.* Bot all men that are decreaped, lamed, mutilat, or passed the age of threescore zeires, are excused from singular battel. *Leg. 4. c. 4. leg. Burg. c. Si burgenfis 24.* And sik like, religious persons, clerkes and weemen may not be compelled to fight. *Lib. 4. c. 3. stat. Alex. c. 5. Aff. reg. Dav. c. statuit dominus 38.* It is in free-will and election of the defender, to fight, or passe to the knowledge of ane Assise. *lib. 4. c. 2. Quia defendens debet primo eligere, deinde vadiare, & postea jurare. lib. 4. c. lex statuit 46.* The appealer or prover, suld sweare that his quarrell is just, and the defender sweare the contrair, avowand the equity of his cause. *Iter. camer. Comparantibus 29.* It is not leasum to ony person to provoke ane uther to battell, or being provoked to fecht without licence of the King, uther-



utherwaies, baith the appealer and the defender tinish and forfeit all their gudes moveable and immoveable, *de Indic. c. 87.* Because na Barrone hes power of singular battell, or of probation be water or trone; except the Kings Schireffe, or his deputes, be present to see justice done. *Stat. Alex. c. pratered. 32.* Mair-over, gif ony man havand the Kingis licence, happenis to bee convict be battell, or of breaking of the Kings peace, he fall pay to the King xxii. Ky & tres cathorios, *vel pro quolibet cathorio, novem vaccas. Stat. Alex. c. apud. 28.* Quhilk paine and unlaw, appearis to be ordained, to stay sik ungodly strife and debate; for the law of singular combat is ungodly, and suld not be used among Christians, albeit the same was permitted and used be the *Longobardes*, in civil and criminall causes. *Alciat. de sing. certam: Cujac. in lib. feudorum.* Quhilk is conforme to the Canon law, *cap. 1. 2. de purgat. vulgar.*

*Dyowr*, *Dyvoor*, utherwaies Bair-man, quha being involved and drowned in debts, and not able to pay or satisfie the same: For eschewing of prison and uther paines, makis cession and assignation of all his gudes and geare, in favours of his creditours: And dois his devor and dewty to them, proclamand himself Bair-man, and indigent, and be cummand debt-bound to them, of all that he hes. *Leg. Burg. ca. Bair-man. 144.* In Latine, *Cedere bonis*, quhilk is most commonly used amongst merchandes, to make *Bank-roun*, *Cedere bonis.* *Bankrupt*, or *Bankrumpne*: Because the doer thereof, as it were, breakis his banke, stall, or seat, quhair he used his trafficque of before. *De Indic. c. Bair-man 46.* Be the Civill law, sik cession of gudes and geare may be maid judicially, or forth of judgement, be him quha is present, or abient, be writ or epistle, or be ane mid-person, called *Nuntius l. ult. de cess. bonor.* Bot to the effect that debtours suld be feared to deceive their creditours, and suld the mair willingly pay their debts, in sindry places, diverse shamefull formes of dyvourie, ar used and observed: for sum-time the debtour naked, sittis upon ane cauld stane, in presence of the people. *Alciatus lib. 3. Parerg. c. 47.* Sumtimes his hinder parts, or hips are dashed to ane stane. *Guido Papa decis. 343.* or in publick place, bair-headed, his Belt is cutted, quhairby he is proclaimed indigent of geare and credit: And therefore may passe and repasse quhair he pleasis, without ony trouble of his creditours. *Iuxta illud Horatii, Epistola secunda. Ibit eo quò vis, qui zonam perdidit.*

Conform to the quhilk, in this Realm, he is said to have his belt cutted, *Zonam perdere*, quha hes na gold, silver, gudes nor geare. For in auld times, like as it is zit used in divers places, ilk man carryed his silver and his gold in his belt, either in ane purse hanging at the end thereof, or sewed and inclosed within the samin. *Sueton. in Vitellio cap. 16. Quia zona aureorum plena se circumdedit. Et Gracchus apud Gellium. Lib. 15. cap. 12. Zonas (inquit) quas plenas argenti extuli, eas ex provincia inanes retuli.* And in the Evangell of Saint Matthew, Chapter 10.9. CHRIST commandis his Apostles nocht to possesse gold, silver, or money in their girdles. Maiover, the forme of the aith quhilk by the Lawes of this Realme, the Dyvour suld make, containis that he sall sweare, that he hes nocht in free gear, above five shillings four pennies: Fra the quhilk cummis ane commoun speech daily used amangst puir and indigent persons, quha hes not in gudes nor geare the valure of five shillings and ane Plack. In the Law of Normandie. *Lib. 2. cap. 10. lib. 12. cap. 21.* Dyvoures are called *Banquerontiers*. And gif they doe the samin fraudfully, they may be punished to the death.

## E

**E**NACH, *Lib. 4. c. statuit dominus 64.* Ane mendis or satisfaction for ane fault, crime, or trespasse. As gif the maistes lvis with the wife of his bond-man or slave: The servand therefore sall be put to liberty, and sall receive na uther Enach, mendis, or satisfaction for the violation or defowling of his wife. *Lib. 2. c. pluribus 14.* Like as utherwaies, *si vassallus Cucurbitaverit dominum suum.* That is, gif the vassall makis his maister ane Cuckold: That is, gif he hes carnall copulation with his maisters wife, he tinis and forfaltis his landis. *Lib. 1. de Feud. Tit. quib. mod. Feudum amittatur, sect. 2.* Corbita, in the lawes of the Longobardes, is Adultery: And *Cucurbita* signifies ane Cuckold, quha is wife is ane huire: quha utherwaies is called *arga*. *Gl. in D. sect. 7.* From the Greek *αργος* *argos*, *οσιος*, quha sittis idle, and payis not his debt, bot suffers ane uther to woork his labour. *Alciatus in lib. de singulari certam. c. 32. & in lib. problematum, Horatium sequutus Cucullum vocat.*

Corbite  
Cucurbita  
Arga.  
αργος.

Encheseone,

*Enchefon*, the cause, occasion, or reason, quhair of ony thing is done: As quhen we say, that ane is condemned for *Enchefon* of thief, That is, be occasion or be reason of thief, committed be him. *Mod. ten. cur. c. 21.* Or that the vassall is in the keeping of his overlord, be *Enchefon* of ward. *Quor. attach. c. 51.* And ane action or pley, may be advocate fra the Schireffe Courts to the Kingis Court, for money causes. *Lib. 2. c. Dos autem 19.* Quhilk in findry English buikes, is said for mony *Enchefons*. And *Edd. 1. King of England. Westm. 1. c. 6.* Statutis and ordainis, that na man fall be ane merchand, without ane reasonable *Enchefon*.

*Eneya, Pars hereditatis*, ane French word: for the first, chief and principall part of the heritage. *Leg. Forest. c. si Hereditas 96.* For in the French tongue, and specially in the Law of Normandy, the eldest and first begotten son, is called *l'aîné*. And in the Lawes of England. *Hen. 3. in stat. Marlebrig. c. 9.* It is called *Enitia pars hereditatis*. And likewise in ane uther place of the samin King, *In esuicia*, quhilk in this Realme is the law of birth-richt: In Latine, *In primogenitura*, de quo *Tiraquellus* copiosè scripsit. Be the auld Civill Law of this Realme; there is na richt of succession in the richt line ascendent. And therefore the father succeedis not as aire to his son, except speciall provision be maid in the contrair. *Quia De jure successio-  
provisio hominis tollit provisionem legis. Et pacta conventa, legem con-  
trahentibus prescribunt.* Swa all succession, is either in the richt line  
descendent, or in the line collaterall.

## De linea recta descendendum.

**T**hey quha ar of the richt line descendent, suld be preferred to al uthers: As the son, the daughter, the Nepuoy, the Neipce, and sa descendand in infinitum; observand and keepand alwaies the prerogative of the degree. For the *Prior* degree, excludis the *posterior* from all commodity and title of succession. As the son in the first degree, excludis the nepuoy in the second, and the nepuoy excludis the pronepuoy in the thrid degree.

Gif ony man havand lands and heretage deceasis, leavand ane sonne allanerly behind him, without all distinction, the son succedis to all and haill the heretage, quhilk in Latine, *succedere in* *assem, vel ex ass.* *Lib. 2. c. cum quis 29.*

Gif ony man deceasis, and leavis behind him maa sons nor ane,  
either

¶ *filio.*

either he is *succommanus*, and haldis not his lands be service of ward : and then his heretage is divided amongst all his sons: or he is *Miles*, and halds his lands *per servicium militare*, be service of ward and reliefe. In the quhilk case, the eldest son succeedis in the hail lands; quhilk heretably pertained to his father, *Lib. 2. c. Si quis plures* 30. Bot this distinction is not observed be the practice of this Realme. Be the quhilk the eldest son succeedis to his father, *ex affe*, that is, to all and hail his fathers heretage and lands; Albeit, sundry uther Nations hes diverse lawes here anent: Like as bethe Law of God, in the auld Testament, amongst the Jewes, the first-borne son, after the decease of his father, receivis double portion, *Deut. 21. 17*. That is (as some interpretis) als meikle as twa of his brether, *Iosephus de Antiq. Iud. lib. 4. c. 8*. writtis that the eldest sonne, be reason of his birth-right, suld have *duplicem facultatem paternarum partem*, the double part of his fathers gudes.

*De filiis divorciarum uxorum.*

Gif ane man had diverse wives, quhair of ane is ane heretrix, havand lands pertainand to her heretably, and hes procreat upon ilk ane of them bairnes, maill or femaill; the sonne gotten upon her, succeedis to her heritage, *lib. 2. Si autem* 31. For as generally the son succeedis to the father; Swa in this case, the son suld succeed to his mother. *Leg. Forest. c. Si quis habuerit*, 26. *de Iudic. c. 24*. Conforme to the common rule of the Law, *Paterna paternis, materna maternis*.

*De filiis vel filiabus ex eodem vel alio matrimonio.*

Quhen ony man deceasis, leavand ane son, and dauchters ane or maa; The son allanerly succeedis to all his fathers heretage, *Lib. 2. c. Maritus* 32. As gif ane man hes procreat with his first wife, dauchter, ane, or maa, and after her decease, begettis ane son, upon ane uther wife, the son only succeedis to him. *Leg. Forest. c. Si quis habuerit* 26. Because the son borne of the first, second, or last wife, succeedis as universall aire to his father, and excludis all his sisters. *De Iudic. c. Item nota*, 115. As it is written in some buikes, *Fœmina non succedit cum masculo*.

*De filiis.*

Failzieing sons and bairnes, lauchfully gotten of their bodies the dauchter succeeds. For gif the defunct hes ane dauchter allanerly, she suld succeed to all her fathers heritage, in the forme and maner, as the son succeedis to his father. *De Iudic. c. Item nota* 115. *Lib. 2. c. Hæredum* 28.

*De filiabus.*

*Item*, Gif ane man deceasis, leavand behind him maa dauchters

nor ane, gotten upon ane mother, his heritage suld be divided equally amangst them, in als mony parts or portions, as there are daughters to succeed: Quhilk forme of succession, is called, *successio in capita, cum scilicet hereditas adeunda, dividitur in tot partes quot sunt capita, vel persona succedentes.* Bot the eldest daughter, suld have the principall messuage, without division, be reason of her dignity and birth-right, and satisfaction therfore suld be maid to the remanent daughters, *lib. 2. c. Si autem 31. De Judic. c. Item Nota 115.* Togidder with the superiority of the portions, pertaining to all her zounger sisters, to quhom their husbands suld mak homage, acknowledging her to be their superiour, and their aires suld give the relieve of their lands, quhen it fall happen. *Lib. 2. c. Maritus. 32.*

Gif ane man have findry wives, and of ilk wife ane or maa daughters: All his daughters succeedis to him in his heritage equally *Per capita*, as gif they were all gotten upon ane mother. *Lib. 2. c. porro contingit 33.* *De filiabus diversarum uxorum.*

*Item*, Gif maa daughters nor ane, are procreate upon findrie wives, of the quhilk wives, ane is ane heretrix: Swa that the heritage cummis be her, and not be her husband: The daughter or daughters gotten upon her, succeedis to her heritage, and excludis all the rest of the daughters their fra. *Leg. Forest. c. Si quis habuerit 26. De Jud. c. 24.*

Be the Lawes of the Burrowes, gif ane Burgesse have maa wives nor ane, and bairnes procreat of ilk ane of them: All the lands pertaining to him, be reason of heretage or conquest, in the time of his first wife, suld pertain to the bairne gotten with her in the first mariage: And all the landes conquest be him, the time of his second wife, fall pertain to the bairne gotten with her, in the second mariage. *Leg. Burg. c. Si Burgensis, 26.* *De liberis burgensium ex diversis uxoribus.*

Failzieng sonnes and daughters, quhilk are nearest and lauchfull aires, the richt of succession pertainis to the *Nepuey* or *Neipce*, gotten upon the son or the daughter. *Quia deficientibus proximioribus heredibus, nempe filio, vel filia, vocantur heredes remotiores, ut Nepos vel Neptis ex filio, vel filia, recta linea descendens.* *Lib. 2. c. Heredum, 28.* *De secundo gradu neporum vel neprium.*

Gif ony man deceasis, leavand behind him ane *Nepuey* or *Neipce*, ane or maa, procreat be his son already deceased. (*Ex filio premortuo*) they suld succeed to him in the samin maner, as is abone *De nepote uno vel pluribus ex filio.*

abone said, of the succession of sonnes : That is, gif there be ane *Nepuoy* allanerly, hee is onely universall successour : And gif there be maa *Nepuoyes*, the eldest allanerly succeedis to all, *Lib. 2. c. Porro 33.*

*De nepote  
& filio.*

Gif ony man deceasid, leavand behinde him ane *Nepuoy*, begotten be his eldest son, already deceased, and ane second son, quha is father brother to the said *Nepuoy* : The second son is excluded from all richt and commodity of succession to his father. Because the *Nepuoy* lauchfully gotten be the eldest son, representis the person of his father, and therefore *Iure representationis* succeedis in his fathers richt : and consequently, is onely aire to his gud-schir : like as his father would have bene, gif he had not deceased before him. *Lib. 2. c. Porro 33.*

*De nepte  
& filia.*

The like is to be understood of ane *Neipce*, or *Neipces*, ane or maa, begotten be the eldest son already deceased, quha suld be preferred to their father brother, anent the succession of their Gud-schirs heritage : Except speciall provision of tailzie be maid in favours of the aires maill : *Quo casu heredes masculi succedunt, non dispositione juris, sed ex provisione hominis.*

*De nepte  
una vel plu-  
ribus.  
Successio in  
stirpe.*

*Item*, Ane *Neipce* or maa, of ane son or dauchter succeedis to their Gud-schir or Gud-dame, in the samin maner as their father or mother suld have done, gif they were zit living. *Lib. 2. c. Porro 33.* And in this case it is to be observed, that quhen maa *Neipces* nor ane, borne of findry mothers succeedis, that the heritage suld be divided *ratione stirpis*, in as many parts, as there is stockes, of quhom the saids *Neipces* descendis and proceedis : As for example, gif there be ane *Neipce* begotten upon ane dauchter, and twa *Neipces* begotten upon ane uther dauchter, they all three suld succeed to their Gud-schir ; but the heritage suld not be divided in three parts, *ratione capitum*, bot in twa parts allanerly, *ratione stirpium* : That is, of the twa sisters quhilks ar the twa stockes, of quhom the saids *Neipces* descendis : And swa the ane *Neipce*, gotten upon the sister, suld have the ane halfe, and the uther twa, the uther halfe allanerly of the heritage : Quhilk forme of succession is called *successio in stirpes*, quhen the bairnes being maa in number, succeedis to als meikle allanerly, as wauld have pertained to their mother, gif she had bene living.



## De linea obliqua collateralium.

**Q**UEN the succession failzie in the right line descendent, when they quha are of the side line, or collateral suld succeed, as quhen the sonnes and daughters, and all persons descendand of them lineally, failzie: Swa that there is nane of then to succeed: Then the brother of him quha is deceased, suld succeed to him. *Lib. 2. c. Deficientibus 24. Illi enim qui ex linea recta descendunt, semper praferuntur illis qui ex transversa linea proveniunt, & illis deficientibus, hi ad successionem admitti debent, lib. 2. c. Porro 33.*

The heretage, and the air-schip of all moveable gudes, pertein-  
ning to the eldest brother, deceased without lauchfull aires of his  
bodie, perteinis to the second brother, immediatly nearest to him,  
*Quia hereditas gradatim descendit ad immediatè proximum. Lib. 2. c. Si ergo 23. c. Praterea 25. leg. Burg. c. sciendum 150.*

Gif there be three brether german, borne of ane father and ane  
mother, and the second brother deceasid without aires, procreat  
lauchfully of his body: his elder brother succeedis to him in his  
lands and immoveable gude: and the yonger or thrid brother is  
alluterly excluded therefra. *Quia conquestus gradatim ascendit, lib. 4. c. Si tres 50. lib. 2. c. Praterea, 25.* Bot be the practique of this  
Realme, the air-schip of the moveable gudes, perteinig to the se-  
cond brother, the time of his decease, descendis and perteinis to  
the yonger and thrid brother, as lauchfull aire: To quhom like-  
wise perteinis the lauchfull tutory of the said second brothers son,  
quhen it fall happen to fall.

Gif there be maa brether nor ane, three, or maa in number, and  
the youngest of all happen to decease without lauchfull aires, got-  
ten of his body, his immediat elder brother succeedis to him as  
lauchful aire; because conquest ascendis fra ane degree to ane uther,  
immediatly to the first degree. *Stat. Ro. 3. c. 3. stat. Wilh. c. notand. 24.*

Failziand the brether, and their aires, gotten of their bodies, the  
sister, or sisters, gif there be maa nor ane, succeedis in Capita, to  
their brother, in the samin maner, as the daughters succeedis to  
to their father. *Lib. 2. c. deficientibus 34. de Judic. c. Si quis 24.*

Gif the brother deceasid without aires gotten of his body, his  
full sister gotten with him be ane father, and of ane mother (quhilk  
is called *soror germana ex eodem utroque parente*) succeedis to all  
his

his heritage, and excludis all uther sisters, gif ony be gotten be his father, upon ane uther wife, quhilk in Latine is called *soror consanguinea*, lib. 4. c. Si homo 48.

De sororum  
liberis.

After the decease of the sisters, their bairnes succeedis in stirpes, in the samin maner, as their mothers micht have done, keipand alwaies the distinction betuixt the maill and femaill, be the quhilk the sister son excludis the sisters dauchter Lib. 2. c. deficientibus 34. de Indic. c. Si quis 24. Quia (ut dictum est) mulier nunquam cum masculo partem capit in hereditate aliqua.

De patre  
ejusque li-  
beris.

Failzyng the sisters bairnes, and the aires gotten of their bodies, the father brother (*Avunculus, hoc est, patruus*) And his bairnis descendant of him, succeedis. 1. 2. c. Deficientibus 34. de Indic. c. Si quis 24.

De amita  
ejusque li-  
beris.

Failzyng the father brother, and the aires lauchfully gotten of his body: The father sister (*Matertera, hoc est, Amita*) and her bairnes suld succeed conforme to the foresaid distinction, betuixt maill and femaill. Lib. 2. c. Deficientibus, 34. de Indic. c. Si quis 24. Be the quhilk distinction, the father sisters son, excludis the fathers sister dauchter.

De jure ac-  
crecendi.

It is to be diligently observed, quhen maa persons nor ane (sik as mony sisters or Neipces) succeedis, and it happen ony ane of them to decease without aires lauchfully gotten of their awin bodies: the portion and part of the heretage quhilk pertained to the defunct, accrescis to all them that remainis on life, and suld be divided amangis them all. Lib. 2. c. Maritus, 32. de Indic. c. Item nota. 115.

Last of all, gif ony man gotten and borne in lauchfull marriage, deceasis without ane lauchfull aire, and it cannot bee knawin quha suld succede to him. Or gif it bee in question or doubt, quha is the richteous aire: Be the auld Law of this Realme, the King, or ony uther Superiour, reteined the lands in his awin handes, untill the pley was ended, in favours of the just aire: Or untill it was knawin quha was the lauchfull aire. Lib. 2. c. ult. 53. Bot now, gif there be na lauchfull aire, to enter to the heritage: the King, as *ultimus heres*, recognoscis, and reteinis the samin as escheit, *ad perpetuam remanentiam*, and may sell and dispone thereupon at his pleasure, as his awin proper lands and heritage, *vide Bastardus*.

*Erectare Essonia ab aliquo facta*, to reckon, esteeme, or judge Es-  
sonzies

sonzies or excusations maid be ony person. *Quon. attach. c. de brevibus* 31.

*Essonium*, ane *Essoinzie* or excusation. *lib. 1. c. 10. Jam. 2. 13. Otto. p. 11. c. 55. Jam. 1. p. 9. c. 114.* From the French word *Exoine*, quhairof mention is maid in the Lawes of Normandy, *lib. 9. c. 10.* And be *Molians in Styl. suprem. cur. parl. 1. c. 16. de contumacia.* And be *D. Thom. Smith. lib. 2. c. 14. of the Common-weill of England.*

*Estoverium*, *Iter Camer. c. Si quis captus 25. de Iudic. c. 156.* Sustentation, Nurishment: for the superiour, during the time of the ward, suld susteine the aire honorably, conforme to the quantity of the heritage. *Lib. 2. c. Plenam 42. Jam. 4. p. 30. 25.* Quhilk is conforme to the English Law in *Magna Carta*, Quhair it is statute, that the wardar sall give the aire his reasonable *Estouvery*, *An. 9. Hen. 3. c. 12.* Quhair also it is written, that the relict of ony man, sall have her reasonable *estoverium*, of the common gud's of her husband that is deceased, untill her dowry be payed to her, *Vid. Quarentena viduarum.*

*Eve & Treve, dicuntur nativi de avo & triavo, quorum majores servitutem servierunt*: That is, sik slaves or servandes, quhais father, gud-schir, grand-schir, and forbear, hes bene servandes to ony man, and his predeceffours. *Quon. attach. Cn. de brevibus* 31. *vid. Bondage.*

*Exitus terra*, The rents, fruits, and profits of the land. *Lib. 1. c. Si quis liberum 24. lib. 3. c. cum autem 6. Quon. attach. c. secus 28. leg. Forest. c. Probata 87. Exitus iustitiarie*: The profit or commodities of the Justice aire. *Iter Iustic. c. 3. 4. Exitus curie*, the commodity and profit of the Court, sik as unlaues and summes of money, payed be them quha are amerciat or convict of ony crime, or comes in will therefore, as it is manifest be the forme of the precept, direct be the Chalmerlane to the Schireffe, to take up, and intromet with *exitus camerarie*, or the profits of the Chalmerlaine aire. *Exitus hereditatis, de actorn. c. 1.* Is called the fruits, rents, profits, and emoluments of the heretage, quhilk in the English law is called the issues of the heritage, *Mag. Cart. An. 51. Hen. 3. c. 17.* And sik like, *Exitus tenementi*, signifies the mailles and dewties thereof. *Quon. attach. c. Secus 29. M. d. con. cur. c. 30.*

*Extent* of lands, signifies the rents, profits and issues of the famin, quhair of there are twa kindes, the auld extent, and the new extent;

For it appearis that the rentall and valour of lands, hes bin taxed and liquidat to ane certaine summe of silver, conforme to the profits and dewties, quhilk the lands payed at that time; quhilk is called the auld and first extent, *tempore pacis*. Bot becau<sup>e</sup> the revenues and dewties of lands be progresse of time, did increase and grow mair and mair: ane uther taxation & extent was maid in the time of peace, as the former extent, conforme to the profitis augmented, as said is, quhilk therefore is called the new or second extent: And properly is the very avails that the land is worth, and givis the day of serving of the brieve. *la.3.p.7.c.55*. To the quhilk, the word *Nunc*, contained in the brieve and retour, suld be referred. For *tempore belli*, or in time of weire, there is na ordinar or certaine extent of lands, prescribed be ony law: For in sik time either the lands ar waste, and ar not laboured, or the lands-lords servis in proper person: and it is na reason, that they suld baith make personall service, and also pay extent or taxation. The Lords of the Session esteem ane mark land of auld extent, to foure mark land of new extent. *21. Mart. 1541*. Quhilk commonly is called, the fourth maill, and suld be generally used in retouring of lands to the Kings Chancellary, and uthers Chappelles: Albeit the samin is not perpetually observed. This distinction of the auld extent, and new extent, is necessar: For taxation of lands are raised, conforme to the auld extent, and the reliefe of lands, is the retoured maill, according to the new extent. And sik like, quhen the lands are fallen in the superiours hands, be reason of none-entresse, he suld have allanerly, the retoured maill thereof, conforme to the new extent, *vide* None-entres.

## F

**F**ALSING of doomes, Reduction of decreetes. *vid. Sock. FARANDMAN. De Indic. c. 47*. Ane stranger or Pilgrimer, to quhom justice suld be done with all expedition, that his peregrination be not stayed or stopped. *Peregrini mercatores, dicuntur Farandman. Lib. 4. c. 39. in lib. Sconensi.*

*Felonia*, signifies not onely the falsed, or the contumacie of the vassall toward his over-lord, or of the over-lord toward his vassall.

Bot

Bot also all and quhatsumever capitall crime, in Latine, *Scelus*, in Dutch, *Schelmrie*, or ony uther fault or trespassse. *Iser camer. c. Si quis captus* 25. *Stat. Alex. c. 2. c. Ultim.* 54. As to hurt or assaultie ony man, with sword, either edge or ure. *Iac. 1. p. 6. c. 97.* Or ony lesse or private crime, as suspition of thief, or quhatsumever fraud, deceate, commonly used in contractes, pactions, and uther conventions, *lib. 3. c. ex causa* 8. *in fine. Cuius lib. 1. de feud.* Writtis that felony is not only rebellion, bot also perfidie, fraud, or ony kind of fault, *perfidia, fraus, culpa, improbitas.*

*Feodum, Feudum*, signifies not (as some affirmis) life-rent, in Latine, *usus fructus*. For he that is saised in the life-rent of lands, is not understand to be saised in *feodo*, or in the fee thereof; For the ane is different from the uther, 7. *Mart.* 1561. The Countesse of *Crawfurd*, contrair the Earle of *Crawfurd*. And sik-like: *Feodum* signifies nocht the superiority of lands: For git ony married man happenis to decease, vest, and saised in the superiority of lands, his wife suld not have ane terce, or thrid thereof. Bot *Feodum* commonly signifies the heretable fee, and property of ony thing, and specially of lands, as is commonly contained in the brieves and retoures, *Cum aliquis dicitur obuisse saisitus & vestitus in terris aut de feodo*, *lib. 3. c. Cum vero* 28. *c. sequens* 33. *Stat. Rob. 3. c. 1.* Of the quhilk lands, the just thrid, and reasonable terce, will pertaine to the wife, fra the time of her husbands decease, induring her lifetime, *vid. Quarantena viduar.* *Dominus feodi* or *feudi*, is called the Lord of the ground or land, *lib. 2. c. Usurarii* 53. quhair *feodum & hereditas*, ar baith ane. *Et hereditas damnati propter crimen, dicitur pertinere ad dominum feodi, tanquam escheta.* Item, *si quis condemnatus fuerit de furto, res ejus mobiles, & catalla solent vicecomiti remanere: Terram autem si quam habuerit, dominus feudi habebit*, *lib. 2. c. Forisfactum* 55. He is called utherwise, *Dominus fundi*, *lib. 2. c. Defuncto* 69. *Et feudum idem est quod fundus*, *lib. 2. c. Mutua* 68. And *Actio feudi*, is ane action or pley of landes or heritage, *lib. 1. c. 2. Feodum militare*, signifies lands halden be service of ward and reliefe: *lib. 2. c. Maritadium* 56. *Feudum laicale*, Is landes pertaining to Laicks and Temporall men, *lib. 2. c. 59.* As *feodum Ecclesiasticum*, signifies lands pertaining to the Kirk, or Kirk-men, *lib. 3. c. sequitur* 31. *Cum seq.* Swa be the laws of this Realm, al guds and geare ar moveable, and called *Catalla*: Or immoveable, and ar called *feodum, hereditas, terra, fundus, tenementum*. Fee or property, in

in Latine, *dominium*, cannot pertaine to maa persons nor ane. *Quia dominium unius rei uno eodemque tempore non potest esse in solidum penes plures.* And therefore, gif twa or maa persons happenis to be infeft, conjunctly in one lands, the property pertainis to him in quhais aires and successours, the infeftment resolvis. As for example, The husband and the wife are infeft in certaine lands, the langest liver of them twa, and the aires gotten, or to be gotten betwixt them, quhilk failzying his aires: In this case the husband is proprietar, and the wife is conjunct fear, or life-rentar. Bot gif it be said (quhilks failzying to her aires.) In that case the wife is proprietar, and the husband is conjunct-fear, or life-rentar.

*Feodum*, is taken for the fee, wage, or stipend, given to ane servand for his service, as in the Lawes of King *Mal. Mak, c. 4. de feod. offic. dom. reg.* Quhilk utherwaies is called *liberatio*, ane livery, *vid. Liberatio.* Quhair anent the Lords of secreit Councel and Checker, maid thir ordinances, as followes.

At Edinburgh the thrid of June, 1597.

FOR sameikle as the Lords of his Majesties secreit Councel and Checker, according to the speciall power and commission, given to them be his Hiennesse and his estaites, quhilks conveyed at *Dundie*, in the Moneth of *Maii* last by-past: Hes thought meete and convenient to set down the prices of his Majesties signet, privy and great Seales, of all infeftments, and uther signatures, quhilk ordinarily suld passe throw them: And of the Chalmer fees, quhilks fall be received hereafter, fra his Hiennesse lieges, in maner following: That is to say, That the Signet, according to the auncient custome, fall be the rule to the privie and great Seales, in all infeftments, and uthers signatures, quhilks ordinarily suld passe throw the hail three. And that the privie Seale, fall receive na mair, nor the double of the price, set downe hereafter: for the Signet, nor the great Seale, mair nor the quadruple of the said Signets price, under the paine of deprivation of the contraveeners, fra the Office and Seale, quhilk he possessis.

Prices of  
the Seales.

Prices



*Prices set downe to the Signet, for letters and others writes,  
quhilkis passis throwna uther seale:*

**F**irst, of all sorts of summonds of quhat sumever qualitie. vj  
shillings, viij pennies.  
 For letters conteining baith inhibition, and arreistment. xj shill.  
viij pen.  
 For letters of law-borrowes, and uther criminall letters, how ma-  
 ny persons soever be insert vj shil. viij pen.  
 For Ministers letters zeirly raysed vj shil. viij pen.  
 For all letters of horning of quhat sumever quality, except letters  
 of Law-borrowes, and criminal letters xxj shil. viij pen.  
 For ane relaxation vj shil. viij pen.  
 And gif maa nor ane be insert, the like price of every person to  
 be relaxed, or composition for them, at the discretion of the kei-  
 per of the Signet.

*Prices set downe to the Signet, for signatours passing the  
Privie and great Seale.*

**F**or ane Legitimation vj shillings viij pennies.  
 For signatours of infestments of lands, within five mark land  
 of auld extent vj shil. viij pen.  
 For ane remission to ane person onely vj shil. viij pen.  
 And gif it be to maa nor ane, als mony halfe markes, as they are  
 persons, or composition therefore, at the discretion of the keiper  
 of the Signet.

For ane infestment of ane five marke land of auld extent, xiiij  
shil. iiij pen.

And for sa mony maa marke lands, as the signatour containis  
 proportionally: Providing that quhat ever be the extent of the  
 lands, the samin not being styled ane Barronnie in the infestment,  
 the highest price for the Signet, sall not exceed l. shillings.

For ane or maa Baronnies or land contained in the signatour,  
 quhilkis are not unite in ane Earledome nor Lordship, for the haill  
 signatour iiij pounds

For halfe ane Barronnie, swa styled in the signatour xxx shill.

For ane Earledome, or ane Lord-schip of dignitie, having vote  
I in

in Parliament, including never sa mony Barronnies vj punds.

For ane comprising, quhilk exceedis not ane thousand markes,  
vj shil. viij pen.

And gif the same exceed that sum, to pay proportionally, providing that the heichest price exceed not l. shil.

For ane Bishopprick, Abbacie, or Priory, exceeding ane thousand punds of zearly rent to the possessor vj punds.

Being within ane thousand punds l. shillings.

*Reservations.*

Nothing to be tane for reservations of life-rents, contained in the signatoures: In respect the reservation is na new benefit to the receaver, except quhair the resigner is a bastard. In the quhilk case, respecting his Majesties prejudice be the resignation: quha utherwaies might succeed to the lands resigned, be the present possessor's decease, without lauchfull aires: sik reservations fall pay according to the prices before set downe for the lands resigned, comptand alwaies, the man and wife to be ane person.

*Tailzies.*

Nothing to be tane hereafter for ony tailzies, except the foresaid price, according to the quantity of the lands resigned, in respect the feare may alter his tailzie at his pleasure, except quhair the Fear that resignes the lands is Bastarde. In quhilk case, the like price may be tane for every person contained in the tailzie, as is set downe for the quantity of the land resigned.

*Benefices.*

For infestments containeing patronages of Benefices never before disposed, nor annexed to the lands of new infestments of heretable offices. The land is to pay according to the quantitie and rate, before set downe, and the patronage, gif it be of ane onely benefice, the ane halfe of the duety of the land. Gif they be mair, to pay the said haill price of the lands for the saidis patronages. Quhilk price, the keeper of the signet fall not exceed. Sik-like for new and heritable offices.

*Officers.*

*Prices set down to his Highnesse prius Seale, so be tane hereafter, of sik gifts and uther signatoures quhilk passis the said Seale allanerly.*

**F**Or escheits of zeemen, and uther meane persons xx. shil.  
**F**or escheits of landed Gentlemen and substantiall Burgeses.

xxx. shilling.

For escheits of Baronnes xl. shil.

For escheits of Earles and Lords iij punds.

For

For their life-rents, <i>respectiva</i> — — — double price.	
For presentations to Vicarages	xx. shillings.
For presentations to Parsonages	l. shillings.
For respects to zeamen men, and uther meane persons	xxx. shil.
For respects to landed Gentlemen, and substantialious Burgeſſes	xl. shillings.
For respects to Barronnes	iiij punds.
For respects to Earles and Lords	v. punds.
And gif there be maa persons contained in the signature, to pay <i>per capita</i> , according to their rankes.	
For the wards and mariages, non-entrefſes and relieves of landed men, under Barrohes, included in ane ſignatour	iiij punds.
For the wards, mariages, non-entrefſes and relieves of Barronnes,	vj. punds.
For the like of Earles and Lords	x. punds.
For the ward allane of Gentlemen	xxx. shil.
Of Barronnes	iiij punds.
Of Earles and Lords	v. punds.
For the mariage allane of ſimple Gentlemen	xxx. shil.
Of Barronnes	iiij punds.
Of Earles and Lords	v. punds.
For the non-entrefſe allane of meane landed men	xx. shil.
Of Barronnes	xl. shil.
Of Earles and Lords	vij punds.
For giftes of Prebendaries or Chaplanaries	xxx. shil.
For Tutories	xxx. shil.

For the multitude of denuntiations included in ane ſignatour of eſcheit, or life-rent, na payment, but for the gift onely : In reſpect they can import but ane gift of eſcheit allanerly.

For presentations to Prelacies, legitimations, ſignatours of infeſtments of Barronnies, and uther lands, remiſſions, and ſik uther writs, as paſſis firſt the Signet : The keeper of the privie Seale, ſhall take for them allanerly, the double of the prize, quhilk ilke ane of them payed to the Signet.

In tailzles, reſervations, patronages, heritable offices, erections in free Burrowes, and ſik like, to take payment, according to the order and proportion of the Signet.

*Asent the Chalmer-fee.*

**I**T is ordained, that na signatours hereafter, fall pay Chalmer-fee, except resignations, and confirmations, irredeemable allanerly: and of sik lands as are neither of his Majesties propertie, nor temporalitie annexed, quhilks are declared to be free of all sik fees in time cumming.

*Prices set downe to the great Seale.*

**T**hat the keeper of the great Seale, exceed not the quadruple of the Signet, or double of the privie Seale, under the foresaid paine. That to this effect the keeper of the Signet, fall upon the back-side of the prent of the Signet, set downe the price quhilk he receives for every precept, and for all uthers letters after his name. Likewais the keeper of the privie Seale, his price for precepts, and uther letters after *per signaturam*: that thereby the keeper of the great Seale, pretend na occasion of ignorance. Sik-like, that the said keeper of the great Seale, set downe his price in the fore face of every tag, quhairunto the said Seale fall be appended: And that thereafter their be na drink-silver wasted fra the partie, uther nor he will be content to give at his pleasure and discretion. And ordains the Herauld, Maister, or uther officiar of armes, to passe to the Mercat-Croce of the said Burgh of Edinburgh, and there be open proclamation make publication, and intimation of the premises, to all and findrie his Hiennesse lieges, quhair-throw hane pretend ignorance theirow. As alsua to command and charge the keepers of the Signet, privie, and great Seales, Ischers of his Hiennesse Chalmer, and all uthers quhom it effinis, to conforme themselves to the will and direction of the saides Commissioners, signified to them in maner foresaid: and on nawais take upon hand to altar or contraveene the same in any point hereafter, as they and ilke ane of them will aunswer to his Majestie, upon their obedience, at their uttermost charge and perrell, and under the paine of deprivation of them fra their offices, certifying them and they failzie, That they fall be deprived fra their said offices, and utherwaies punished in their persons as effinis.

*Apud*

*Apud Edinburg quarte Junii, Anno 1597.*

**T**He Lords of secreit Councell and Checker, following the commission given to them be his Hiennesse and his Estaites, lately convened at *Dundie*, anent the ordour, taking with the exorbitant prices of all sorts of writtes and letters, usuall among the lieges, and likewaies of the Seales, Registers and Chalmer-fee, quhilk a great number of the same mon passe, procuring daily baith private grudges and publick exclamations, against the tolerance and with-gang, given to sik shamefull extortion and abuse, highly to his Majesties dishonour and offence, and to the manifest undoing of the puir anis of this Realme, constrained to have adoe with the saids writs: Have for remeid of that abuse, decerned and ordained in time comming, and quhil a mair particular and solide ordour may be taken therein, That all and quhatsoever Clerkes of Session, Justice, secreit Councell and Checker, Clerkes to quhatsoever Commislar, Admiraller, Schireffes, Stewards, Bailies of regality and royalty; Provelts and Bailies of quhatsumever his Hiennesse burrowes, and of all uther Courts or Judgements within this Realme, all writers to the Signet, privie and great Seales; all keepers of quhatsoever tolles, Registers and Records, all publick Notars, and uthers writers quhatsoever, quha sall hereafter register and in-roll, forme, extract, writ, or give out for payment, to ony of his Hiennesse lieges, ony signatour, contract, obligation, decret, act or ordinance of ane Court or Judgement, chartour, sailing, or uther evident, billes, letters or uther writs quhatsumever of ony importance to the receiver: Sall subscribe with their hands the said writ, and subjoyne to their names, the just and ordinar price, quhilk they receive fra the partie for their paines. To be a testimony of their discretion, in valuing of their travelles taken in the saides writtes, and to give further licht to the saidis Lordes, quhat constant prices they may set upon the like in time to come, under the paine of deprivation from their offices, and punishment of their persons at his Hiennesse further pleasure, in caise of failaie. And ordainis letters to be direct. To make publication of the premissis to all and findry his Hiennesse lieges, quhair throw nane pretend ignorance thereof.

*Fercoffa*, ane Italian word: Ane kinde of Schip or little Boate.

In ane priviledge granted to the Burgh of Dundie, for reparation and bigging of their Port and Haven, be King James the second, in the zeir of God, 1458, and of his raigne, 22. Mention is maid of ane *Fercost*, quhilk is inferior in birth and quantity to ane Schip, because the impost and taxation laid upon ilke Schip is ten schillings, and upon the *Fercost*, twelve pennaies, and of every Crear, busch, barge, and ballinger, five schilling, and ilke great boat sex pennies.

*Ferdingmannus*, ane Dutch word, ane penny-maister, or Thesaurar. *Stat. gild. c. 5.*

*Fidelity*, maid to superiour, and over-lord, *vid. Homagium.*

*Finis*, finance or composition maid with thieves. *Stat. 2. Rob. Bruyse. Item 9.* In the quhilk place it is called *rachetum*, or thieft-boat. *Finis curie*, ane composition quhilk ony man gives in ane Court, sik as the justice aire to the King, *In registro 28. December, 1541.* The Thesaurar contrair the Burgh of Perth. *Finem facere cum rege*: to fine with the King, or to make ane finance, and satisfie him for ony trespasse committed against him or his Lawes. *Ass. reg. David. c. 3. lib. 4. c. 3. c. si vir. 16.* or *finem reddere regi*, to pay ane fine or composition to the King for ane crime, sik as thieft-boat. *Stat. 2. Rob. Bru. c. item ordinat. 9. Finem facere cum molendinario de mulura*, To agree and compone with the Miller for the multer. *Stat. Wilhelm. cap. Item statuit quod detentor. 11.*

*Firmarius*, ane mail-payer, ane mailer, or mail man. *Leg. Burg. c. si firmarius 56. Quon. attach. c. nullus 26.* *Firma* signifies the duty quhilk the tennent payis to the landis-lord, quhiddir it be silver-maill, victuall, or uther duty. *In stat. gild. c. 48.* In the quhilk signification, it is commonly used in the *French Lawes*.

*Forensis*, from the *French* word *Foraine*: In the Burrow lawes of this Realme, signifies ane un-free-man, quha dwellis not within Burgh or out-dwelland-man. And therefore is called *Ruremanens*, quha dwelland aland-ward, hes na priviledge, or immunity within Burgh. Commonly all strangers are called *Forinseci*, or *Foraines*, uther waies *advena*. Quhair anent it is statute, that na Burges dwelland in Burgh, sell harboury ony strange man in his house, langer nor ane night, without Borrowes and caution. *Leg. Burg. cap. Nullus in Burgo 88. Quon. attach. cap. nulli 47. Servitium forinsecum*, signifies sik service as the vassall or tennent, suld doe to his over-lord and maister, fra hame, or in time of weir-fare. In England



land they quha are not borne English-men, are called Alienes: Quha enjoyes not libertie within the Realme, except they be *Denized*, quhilk word appeares to be driven a *Danis*, *quasi danisatus*, that is maid lauchfull and free, as ony *Danefman*, quhen the *Danes* did occupie and possesse ane great part of that Realme: Or it may come fra the French word *Denier*, that is to deny. Because sik persons as are denyed in England, denyis and renouncis their awin native Cuntries, and becummis English-men, as naturally borne English-men.

In France they are called *Ambani*, or *Albini*, *quasi alibi nati*, strangers not borne within the Realme of France, quha theifore deceale and in France; without lauchfull succession of their bodies; hes na power to make testament. For their gudes and geare, are nocht given to their aires, or successours, bot are confiscat to the Kings use, be the law quhilk is named, *Albinage*, *jus albinagii*. *Cheff. sam. in consuetud. Burgund. Rubric. 21. sect. verb. dies confiscationis Nu. 37.* In the Actes of Parliament, *Mary*, p. 8. cap. 66. it is called *droit d'Aubeyne*.

*Forestarius*, ane Forester, or keiper of woods, to quhom be reason of his office, pertainis the bark and the hewen branches. And quhen he rides throw the forest, he may take ane tree als heich as his awin head, *leg. Forest. c. 10.* *Foresta*, is called ane large wood, without dike or clausure, quhilk hes na water. *Sylva* is ane wood neare adjacent to ane flude of water: bot quhen the samin is inclosed with dike or hedgings, is called ane Parke, *Cheffa. in consuetud. Burgund. Tit. des forests 13. in prin. per gl. in c. cum dilecti. de donationibus. Felin. in c. Rodolphus, extr. descript. Nu. 21.* *Quhair foresta* is called a place, quhairin are included wild beasts, and quhair sum hes liberty of hunting. Bot quhair there is ane fluid of water, it is *Sylva*. And beand circled about, and environed with waters *Insula*: And inclosed with dikes or hedgings, *parcus*. *Io. Andr. in d. dilecti. Infeodatus in liberam forestam*, infest in free forest, hes power to hunt, halke, and cut trees, quhilk we call *potestatem venandi, aucupandi, & secandi*, quhilk liberty na person may use bot be special licence granted to him, *vid. Varena. vid. Venison. vid. Werd.*

*Foris-factum*, ane unlaw, quhilk utherwaies is called *amerciammentum* l. 1. c. des autē 19. stat. *Alex. c. si quis conquestus* 9. l. 4. c. 3. leg. *Burg. c. foris-factum* 42. *vid. Amerciammentum*. It is taken for fornication committed be ane woman being airt femaill within waird,

ut cum femina dicitur forisficere de corpore suo, to fore-fair, or abuse her body, vid. Putagium. Item, it signifies whatsumever fault, trespassse and crime, and is called fore-fault in the Acts of Parliament. Jam. 2. Parl. 3. c. 6. And quhair it is written, *pro uno foris-facto non debet esse nisi unum amerciamendum*. Leg. Burg. cap. de uno 3. In ane uther place it is said, *Pro uno delicto, non debet esse nisi una misericordia*. Assis. Reg. David. cap. ad hoc 28. That is, for ane fault there sould be bot ane un-law. And in the English Lawes, Henri. 3. In carta de foresta cap. 15. all Out-lawes for the Kingis Forresteres, sall returne to his peace, and sall finde to him sure pledges, that they sall nocht doe ony fore-fault, or wrang in his Forresteres. *Foris factum plenarium regis*, may be extended to the death, as *plenaria justitia*, quhilk sould bee execute upon him quha stops the sleuth-hound, in persewing of thieves and thief. Lib. 4. cap. & si quis 35. And it is statute that nane sall stop the Kingis Burgessees to buy and sell, and freely throw-out all the parts of the Realme, *Super plenarium foris-factum regis*, leg. Burg. c. si burgenses, 141. vel *super plenariam foris-facturam*. Lib. 4. c. Statutum 38 Stat. Wilh. cap. Item statuit 19. conforme to the quhilk constitution, he quha troubles or molestis Merchandes dwelling within Burgh, to use their freedom and priviledges: may be accused as ane oppressour of the Kings lieges, Jam. 5. p. 4. c. 26.

*Foris-familiari*, *Foris-familiat*, put furth of his fathers house, or maid free, and delivered forth of his fatherly power, the sonne is called *foris-familiat* be the father, quhen he with his owin consent and gud will, receivis from his father onely lands: and is put in possession theirof, before his fathers deceale, Lib. 2. c. porro 33. and is content and satisfied therewith. Swa that he nor his aires may not claime or crave ony mair of his fathers heritage. *De iudicibus* cap. Item nota, 115.

*Forestallers*, vid. *Regraters*.

*Fortalitinum*, Jam. 2. p. 3. c. 3. Stat. 2. Rob. Br. c. Item ordinatum 8. Ane fortalice, ane Castell, and properly ane house or towre quhilk hes ane battlement, ane barmekia, or ane fowfie about it. 7. Febr. 1596. Lord Fleming contrair James Ross.

*Forthocht-fellony*, *præcogitata malitia*, quhilk is done and committed wittingly and willingly, after deliberation and set purpose, and is different from *chandzelle*, quia ut scribit Cicero. l. 1. offic. In omni injusticia, permulsum interest utrum perturbatione aliqua animi,

qua

qua plerumque brevis est, & ad tempus, an consultò fiat injuria. Leviora enim sunt ea, qua repentino aliquo motu accidunt, quam ea qua meditata & parata inferuntur.

*Fossa*, ane pit or fowlic. *Furca*, ane gallous, in Latine *Cabalum*, quhilk was first institute and granted be King *Malcolme*, quha gave power to the Barrons to have ane pit, quhairin weemen condemned for theft suld be drowned, and ane gallous quhair-upon men thieves and trespassours suld be hanged, conforme to the doome given in the Barron Court there-anent. *Hector Boetius, lib. 12. Erellio furcarum est meri imperii, & alta justitia, & significat dominium aeris, quia suspensi pendent in aere. Et merum imperium consistit in quatuor, sicut sunt quatuor elementa. In aere, ut hi qui suspenduntur: In igne, quando quis comburitur propter maleficcium. In aqua, quando quis ponitur in culeo & in mare projicitur, ut parricida, vel in amnem immergitur, ut femina furti damnata. In terra cum quis decapitatur & in terram prostermitur. Chiff. in consuetud. Burgund. Rubric. 1. sect. 1. verb. au territorie. Nu. 14. & Rubric. 1. sect. 2. Nu. 2. Porro jurisdictio dicitur notio, qua juri magistratus competit. Mistum imperium, est potestas qua jurisditioni inest. Merum autem imperium est jus gladii, vel alicujus gravioris coercionis nominatim lege concessum. Cuija. lib. 4. de feud. tit. 19.*

*Fri: borb, liberi, plogius, vel fideiussor, quem Galli francum plegium vocant.* In the aulde Britton Lawes, *Bopher vel Borez*, is that quhilk we call Borrowes, borbh, or cautioner. And *Aluredus* King of England, divided England in *satrapias, centurias, & decurias* as fall be declared in the word *Schiref*: and ordained that *decuria*, suld comprehend ten persons, and *centuria* suld conteine ane hundreth persons, quhairof ilk ane was cautioner and sovertie for uthers: in sik sort, that the baill number, and ilk ane of them was answerable for the fault and deed of ony ane of them, and swa was called *Free-borb, Free-pledge*, or cautioner, *vide antiquas leges Brittonum.*

*Furche*, ane word, quhairof I finde na mention in the written lawes of this Realme, nor of ony uther Cuntrie: And zit is used in the forme and order of the Chancellary, from *furca*, ane forke. For quhen ony person is served and retoured narrest and lauchfull aire to ony of his Predecessours, of ony landes halden in chiefe, of ony uther superiour then the King: The directour of the Chancellary, causis his Clerkes direct to the said superiour three

precepts, commanding him to give saising to the person retoured, of all and findrie the lands, contained in the retour, he doing therefore to his superiour, all quhilk he aucht to do of the Law. Of the quhilk precepts, the second is called *Meminimus a forma verborum qua preceptum concipitur*. For the precept bear is that the King remembers, that he directed his first precept and command, quhilk was not obeyed, quhair of he mervailis : And therefore zit as of before commandis the superiour to give saising. The thrid precept is called *Furca*, for quhat cause I know not certainly : Bot like as ane forke hes twa graines, this precept hes ane alternative command of twa parts, for the King commandis the superiour to give saising, or else he certifies him he will command the Schireffe to give the samin. *Itaque hoc preceptum est furcatum, vel bifurcatum, in eadem significatione, qua barba bifurcata*, quhilk is divided in twa taits or parts. And in French *Furche*, is called cloven futed, or forked.

## G

**G**ALNES, *Lib. 4. c. si quis 37. statuit 66.* Ane kinde of mendis, assithment or satisfaction for slaughter. Of the quhilk word I finde na mention in any uther place, or law of uther cuntries.

*Gangiatores, Iter camer, c. Gangiatores 14.* signifies them quha suld marke the claith, bread, or barrels before they be sauld, with the mark of their Office : or tryis or examinatis all measures and weichts, baith dry and weete : For the French *Jage*, is that quhilk we call Jug, met or measure.

*Garba sagittarum*, ane scheif of arrowes, containing twentie foure, utherwaies called *schassa sagittarum*. *Stat. 2. Rob. Br. c. ordinatum est 27.*

*Garcifer*, ane French word. Ane Garson, ane servand quha servis in the Myln, ane myln knave, *Leg. Burg. c. quicunque 64.*

*Gilda*, ane societie and company of Merchandes. For in the auld Britton Lawes, *gilder* signifies the ordour or societie of religious men, or of crafts-men. *Vide antiquas leges Britonum, verbo Conubernales.*

*Girshol*, Girth, sanctuary, in Latine, *Asylum, ass. reg. Da. c. si quis*

*quis in aliquo* 27. *Asylum* is driven from the Greeke, *α. particula privativa, & συναρ.* h. c. *traho, gl. in l. si quis* 17. *de adilit. edict.* Because it is not leasum to draw furth ony person furth of the *Cyrrh.* *Quhair* anent findrie acts of Parliament ar maid, conforme to the Law of God, *Exod. 21. 13. Ioshua 22. 1. &c.*

*Gleba*, ane gleibe, given and granted to Kirk-men and Ministers of the Evangel. *vid. Mansus.*

*Guerra*, *Lib. 2. c. sunt quidam* 71. *stat. 1. Rob. Br. c. 17. stat. 2. Rob. Br. c. ordinatum est* 27. Utherwaies called *Verra* battell, weir. And signifies not onely publick weir and hostility, quhilk is proclaimed and denounced be the lauchfull authority of the Prince: Bot also private deadly feed, quhen ony particular person would revenge ony private injury done to him. For it is statute be King *David* the second, *Quod nullus de cetero moveat guerram contra vicinos suos quoscunque, sub pœna plenaria foris-factura*, 6. November, 1357. Mention is maid of Courtes of *Guerra*. *Jam. 3. Parliam. 8. cap. 69.* quhilkis were halden be Schireffes, Stewards, Baillies, and uther Officers. Bot quhat was the speciall jurisdiction belangand thei to I knaw nocht: And findis na mention thei of in ony uther part of the Lawes of this Realme, alwaies as it appearis that they were halden by the ordinar Judges foresaides, anent strife, debates, crimes, and trespasses committed betuixt familiar and domestick persons, subject to ane maister, within the jurisdiction of the saides Judges, conforme to the Lawes of the fewes, in *sess. ult. de pace tenend. lib. 2. de feud. Si ministeriales alicujus domini inter se Guerram habuerint; comes sive iudex, in cujus regimine eam fecerint, per leges & judicia, ex ratione prosequatur.* Quhilk forme of Courts being particular Justice-courts, was prejudiciall to the jurisdiction of the Justice and his deputies, and grievous to the lieges of this Realme, and therefore are discharged be King *James* the thrid, in the place foresaid.

*Gysarum*, ane hand-axe. *Leg. Forest. c. sciendum est* 67. Quhair it is statute and ordained, that all men of the age betuixt sixty and sexteene, fall have armour, conforme to the quantity and the valour of their lands and moveable guds: that is, he quha hes fiftene pund land, or fourty markes in moveables, fall have ane horse, ane habergeon, ane bonnet of Irone, ane sword, ane dagger. And he quha hes fourty schilling land, or abone, within ane hundreth schilling land, fall have ane bow, arrowes, dagger and knife. And

he quha hes lesse then fourty shilling land, sall have *Gysarum*, quhilk is called ane hand-axe, ane bow, and arrows. And all uthers, quha suld, or may have armour, sall have ane bow and arrower.

## H

**H**AIRMSUKEN, *Lib. 4. c. raptus, 9. in fine, Quon. attach. c. de ca-  
tero. 48. stat. Wilh. c. Item stat. 9.* Ane Dutch word: For Haim  
signifies ane house or habitation, quhair ane dwellis, and quhair he  
hes his winning, rising and lying. As we say, ane man is at hame,  
or not at hame. In the quhilk signification *Cunningham*, is called  
the Kings house or hame, specially quhen the Kings of this Realm,  
quha of before did dwell in the Isles, came to the maine land to  
dwell and remaine in *Deundonald*, and uthir places. *Suchen* in the  
*Germane* tongue, signifies to seeke or search, persew or follow, as  
quhen ane gives up kindnesse to ane uther, he sayis, *Harr, hart, Ich-  
wol euch suchen*, swa hame-suchen, or hame-suken, is quhen ony per-  
son violently without licence, and contrair the Kings peace, enters  
within ane mans house, or seikes him at the same, or assailzies his  
house (as is written in the best buikes) quhilk crime is punished, as  
ravishing of weemen. *Quon. attach. c. si quis aliquem 50. stat. Wilh. c.  
Item stat. 10.* quhilk is esteemed ane great crime contrair the Com-  
mon-weil, quietnesse, and peace of the cuntry, *quia unicuiq; domus  
sua est tutissimum refugium: ideoq; de domo sua nemo debet extrahi. l.  
sed & si. 21. ff. si quis in ius vocat, quod verum esse in causa civili, non  
autem in criminali, notatur in gl. ibidem, quid sit domus. vid. l. 1. ff. de  
agnoscend. liber.*

De quatuor  
modis re-  
nendi ter-  
ras.

*Hawbert*, there is four maner of halding of lands out-with Burgh.  
Sum lands are halden be the Kirke, *Nomine pura elemosyna*, and  
payis nothing bot *devota animarum suffragia*, as was used in the  
time of blindnesse and Papistry: uthir are halden in few, or few-  
ferme of the King, Kirke, Barrones or uthers, quhilks payes ane  
certaine dewty called *feudifirma*, few-ferme: Uthir are halden  
blanch, be payment of ane penny, ane rose, ane paire of guilt spurs,  
or sum uthir dewty quhen it is asked, in name of blench, or *nomine  
alba-firme*: uthir lands are halden be service of ward and relieve,  
and the aire heirow beand *minor*, is in the gairde, that is, waird,  
custodie, and keiping of his superiour, with all his saides landes,  
untill



untill he be *Major*, and of perfite age. And sik-like, his mariage beand *Major* or *Minor*, and not married before the decease of his predeceffour perteinis to his superiour, *vid. Varda*. Lands halden in this last forme and maner, are called *feodum de Hauberk*, or *Hau- bert*, or *feodum militare*, *de maritag. c. diversa. 7. ass. reg. David. c. statutum fuit. 32*. Or *feodum Hauberticum*, or *feodum lorcatum*: Be- cause it is given upon condition, that the vassall possessour there- of, fall cum to the hoist and armie, with *Iak* and armes: For *lorica* *Lorica. a loro*, signifies ane abuilzement maid of corde. And *Hau- bert*, sig- nifies ane kinde of armour, maid of mailzies, or circles like ringes called ane *Haubergion*, conforme to the common proverb, many *Hau- ber. Mailzies makis ane Haubergion*; mony littles makis ane meikle. Of *gion.* the maner of *tenures* in the English Lawes, reade *Littleton*; and in the *Normand Law, lib. 5. c. 3. cum seqq.*

*Haimhaldarf, vindicare, actione reali repetere*, to repeat and seeke restitution of proper guds and geare, and bring the samin hame a- gaine. *Quon. attach. c. 4.* as lauchfull and *haimhald* cattell, *moder. cur. c. 13.* and *Hambald* lint, or *Haimhald* hempe, is that quhilk growis at haime, within this Realme, and is opposed to lint and hemp quhilk is brocht furth of uther cuntries: *Hambaldatio catal- lorum*is quhen ony man seekis restitution to be maid to him of his awin guds and geare, wrangeously taken fra him, quhair of frequent mention is maid in the auld Lawes of this Realme. And he quha seikis the said restitution, suld sweare in this manner: Ane buike beand put within the Hornes, or upon the fore-head of the beast, that is claimed, before twa lauchfull witnesse, that the said cattell acclaimed be him did wander away from him, and that the samin was nocht given, sauld, or ony manner of way annalyed be him to ony kinde of person. *Vid. Cattalla.*

*Hara parcorum. Vid. Creffera.*

*Hebdomas* from *ἑβδωμή* quhilk signifies seven. As *septimana* from *Septem*. For like as be the division maid be *Julius Cesar*, The zeire containis twelve monethes, and the moneth foure oulkes: Swa the oulke comprehends seven dayes, conforme to the num- ber of the seven Planets: to the quhilk the samin are consecrat and dedicate, according to the superstition of the Gentiles, quha worshipped the Planettes as Gods. Bot the Gotthis, and Ger- mans consecrated the dayes of the oulke, to their Idols, uthers than the Planets. Swa the names and appellations of the dayes

of the oulk (used in our language) are taken from the Dutch, and Gotthicke tongues.

For like as oulk, or weik in Dutch is called *Woch*: Swa the day in Dutch is called *Tag*. And the first day of the weik is Sunday, in Dutch *Sontag*, consecrat to the Planet of the Sun: In Latine, *dies Solis*, quhilk utherwise is called, *Dies Domini*, *Dies Dominica*: In the Revelation of Saint *John*, 1. 10. And is the first day of the seven, or of the weik, As is manifest in the Acts of the Apostles, 20. 7. 1 Cor. 16. 2. Because the samin day our Saviour and Lord Jesus Christ did rise from deid to life, *Ioh.* 20. 19. And therefore like as the Jewes observis the Saterdag as their Sabbath: Swa we Christians keipis and observis this day as haly day; and swa it is called, *prima dies Sabbathi*, The first day after the Sabbath of the Jewes.

The second day is Moneday, and corruptly, Mononday, In Dutch *Montag*, so called to the honour of the Moone.

The thrid day, Twisday, in Dutch, *Dienstag*, *Tentonis dies*, quhilk is haly, and superstitiously consecrat to the Idoll *Tenton*, quhom the Germanes worshipped as God, and therefore are called, *Tentones*, *Tentonici*, in Latine be the Romaines, it is called *Dies Martis*, in honour of the Planet *Mars*.

*Olaus Magnus de gentibus septentrionalibus*, l. 2. c. 3. And *Albertus Krantzius Suecia*, lib. 41. c. 1. writtis that the auld *Gottbes*, being Paganis, and ignorant of the true God, did honour and worship their principall and chiefe gods or Idols. The first is *Thor*, quha as *Iupiter* had power of the aire, thonder, windes, cloudes, fair and fowle wether, pestilence, and of all fruits: Quhais Image was placed in ane Chyre, upon ane Cusching, the time of the adoration and worshipping of him: Upon his richt hand was set the secund Idoll *Odhen*, God of peace, weir, and battell. Of the like power was *Mars*, amangst the Romaines. Upon the ker and wrang side, was placed the thrid Idole, *Frigga*, the gods of pleasure of the bodie and lufes of the flesh, as *Venus* amangst the Gentiles and the Romaines. To thir three Idols of the *Gottbis* three dayes of the weik are haly, and consecrat dayes be them. And therefore the fourth day of the weik, instituted and ordained by *Julius Caesar*, is called be him, *Dies Mercurii*, in honour of the Planet *Mercurius*. Be the *Gottbis* *Odenstag*. Fra the quhilk is called *Odenisday*, or *Wednisday*.

The fift day in Latine, *Dies Iovis*, amangst the *Gottbis*, *Thorstag*.

*flag.* For *Iupiter* amongst the Romaines: and *Thor* amongst the *Gothis* was of like preheminence and power. Quhilk day wee call Thursday.

The sext day in Latine, be the Romaines, is *dies Veneris*, in honour of *Venus*, gods of the Romaines, and *Frigga*, gods of the *Gothis*, baith of the like power and dignitie, quhilk day we call Fryday or Fryday.

The seventh and last day of the weike, is consecrat to the Planet *Saturnus*, and is called Sater-day, or Satur-day, *Dies Saturni*, vel *Saturno sacra*.

*Herrezelda*, is the best aucht, oxe, kowe, or uther beast quhilk ane husband-man possessour of the aucht part of ane dauach of land, four oxen gang, dwelland and decaisand theirupon, hes in his possession, the time of his decaise, quhilk aucht and suld be given to his Landis lord, or maister of the said land. *Lib. 4. c. si quis 22. ass. Reg. Da. c. si quis 41.* for *Herr* in Dutch, in Latine *Herrus*, *Dominus*, signifies ane Lord or maister, and *zeild*, is called ane gift, tribute, or taxation, as in the auld Actes of Parliament maid be King *James* the First, it is written, that ane *zeilde* was gaddered for the reliefe of him out of England. And ane urther *zeilde* was collected for resisting the rebelles in the North. Swa *Herrezelda*, is ane gift given be ony man to his Maister and Lord, quhilk suld be his best aucht 17. October, 1470. Quhilk is conforme to the auld Lawes, *lib. 2. c. tenentur*, 35. quhair ilk person makand his testament, suld recognosce and acknowledge his maister with the best thing he hes. Swa it is manifest that the *Herrezelde* is given, be reason of the tennents decaise to his maister as ane gift, for acknowledging and honouring of him, and therefore in the Civill law is called, *laudemium*, à *laudando domino*. Item, in the auld Saxon and Dutch language, *Here* is ane hoist, armie, or weirfare. Swa (as *sum* thinkes) *Herrezelda*, signifies that quhilk is given to the Lord or maister, passing to the hoist, or be reason of weirfare. For sik small husband-men having onely foure Oxen-gang of land, and thereby, be reason of their poverty, not able to passe to weir-fare in proper person, suld helpe their maister, passand forward their-unto: like as *Herschulda*, is the paine of him quha obeyis not the Proclamation maid for weirfare, for *schuld* is *debitum* or debt, and *heribannum* is ane charge or proclamation maid for weirfare, *Cuja. lib. 1. de feud.*

*Hilda*,

*Hilda terra, Hida terra, ane pleuch of land, vide Carucata.*

*Homagium dicitur quando aliquis promittit se esse hominem alicujus domini, & stare, habitare, ubi voluerit dominus. Et super hoc facit homagium, id est, promissionem, ut sit suus homo. Vel homagium dicitur fidelitas hominis, pro rebus temporalibus facta domino. Chession. in consuetud. Burgund. rubric. 3. sect. 1. verb. des fiefs, & in sect. 3. nu. 3. It is a band of man-rent, quhen ony person promissis to serve ane uther, in sik sort, that he sall be friend to all his friends, and foe to all his foes, against all deadly. Lib. 2. c. predictis 60. Leg. Forst. c. quando 60. It is therefore called *hominium*, and suld be maid be the vassall being *Minor* or *Major*, to his over-lord. Lib. 2. d. c. 60. And the samin being made generally without exception of ony man, is called *homagium cum ligeantia factum*. vide *Ligeantia*. Homage differs from fidelity; first be reason of the persons makers thereof, for weemen makis no homage, bot onely fidelity, lib. 2. c. predictis 60. Because Homage concernis service specially in weirfare, to the quhilk weemen are nocht subiect. And likewise consecrat Bishops, makis onely fidelity for their lands and Barronies, lib. 2. c. fieri 61. In this forme, *I* sall be leill and true, to *you* my liege Lord, and *schir* N. King of Scotland, and sall not beare *your* skaith, nor see it, bot *I* sall let it at my power, and warne *you* theirow: *your* counsell conceill, and beill, that *ye* schaw me: *The* best counsell that *I* can geve *you*, quhen *ye* charge me in verbo Dei, and as helpe me God, and the haly Evangell. The second difference is be reason of the forme and maner: for he that makis fealty, kneillis nocht on his knees, Bot he that makis homage kneillis downe: utherwaies the forme of homage maid be Barronnes to the King, and the forme of fidelity maid be them to the King, are nocht farre different, for the forme of homage maid be them is this: I become *your* man my liege King, in land, lith, life, and lim, warldly honour, homage, fealty and lawty, against all that live and die. *Your* counsell conceiland, that *ze* schaw me: The best counsell schawand, gif *ze* charge me, *your* skaith or dishonour not to heare or see, bot I sall let it at all my gudly power, and warne *zow* theirow, Swa helpe me God. The forme of fidelity maid be the Barrones to the King, is this: *I* sall be leill and trew, to *you* and my Lord, Sir N. King of Scotland. I sall never see *your* skaith nor heare it, bot I sall let it at my power, and warne *zow* theirow. *Your* counsell schawin to me, I sall conceile: The best counsell*

counsell I can, I sall give zow, quhen ze charge me therewith, For what  
sa helpe me God. *Fiunt autem Homagia de terris & tenementis* things homage  
*liberis tantummodo & servitiis: de redditibus assignatis in dena-* fuld be maid.

*riis, & aliis rebus. Pro solo vero domino, non solet fieri homagium,*  
*excepto Domino principi, lib. 2. c. fiunt 66. Ita hic locus corrup-*  
*tus & difficilis legi debet.* Concerning the exposition of the  
quhilk: It is to wit, that all homage is maid to the over-lord  
and maister, quhair of sum are maist chiefe and principal, sik as  
the King, to quhom without ony exception, *suprema fides, que*

*nullam exceptionem patitur jure optimo debetur.* Uther over-  
lords are inferiour and subalterne, to quhom their vassalles are  
bound and oblised, and fuld make their homage. And swa  
there is twa kindes of Homage, *aut enim est ligium, aut non li-*

*gium, vid. Ligeantia,* Baith the ane and the uther may be maid  
*pro terris, tenementis, annuis redditibus:* Because ane free-hal-

der of lands, tennents, and annuell rentes, may make homage  
to his immediat superiour for his lands or tenements, excep-  
tand the King and his elder over-lord, quhilk is, *Homagium*

*non ligium, lib. 2. c. fieri, 61. leg. Forest. c. quando, 60.* Or he  
may make homage to his over-lord *simpliciter*, without ex-  
ception of ony person or uther over-lord, quhilk is, *homagi-*

*um ligium. Pro solo domino,* na homage can be maid, bot onely  
domino Principi, quhilk is, *homagium ligium:* Because it is upon  
condition and covenant, that he to quhom it is maid, sall be

maister, lord, and mainteiner allanerly to the maker thereof.  
And quha makis the samin, sall acknowledge him and nane  
uther to be his lord and maister for his maintenance, protection

and defence, quhairanent he makis exception of na person, and  
swa this kinde of homage is maid to the King allanerly, *pro so-*

*lo ipsius dominio, quem solum & nullum alium omnes debent agno-*  
*scere pro solo domino. Hic locus admodum difficilis me diu mul-*  
*tiusque torset, neque aliter me hinc extricare possum, sed in hac ro-*  
*sum unicuique liberum esto iudicium.*

*Huesum, Hoyesum,* ane French word, *Oyr* in Latine *audire*,  
ane hoyes, or cry used in proclamations, quhairby ane officiar  
of armes, or messenger dois conveene the people, and foir-

wairnis them to heare him, *De maris c. sciendum, 17. de iudic. c. 37.*  
L I



It is called alswa, ane Out-hoy, or crie. *Leg. Forest. c. si quis* 91. And ane thiefe suld be taken with the blast of ane horne, with clamour or hues, and presented to the Bailly. And gif thereafter he flies away, he may be slaine leisumly, and hanged up in the next gallous, *lib. 4. c. si quis latronem*, 33. Quhilk in ane part is conforme to the act of Parliament. *Jam. 6. p. 1. c. 21*. And in the Lawes of England. *An. 4. Edw. 1*. Hee quha folowes not the hue, rayfed for apprehending of malefactours, sall be accused therefore.

*Husbandland* containis commonly twenty sex aikers of sok and syth land : That is, of sik land as may be tilled with ane pleuch, or may be mawed with ane syth. For as sum auld writers testifies, the Earle of *March* for the time, caused his servant *Simon*, or *Sim Salmond*, to divide the haill land in the *Mers* into husband lands. Ilk husband-land containing twentie sex aikers, quhair pleuch and syth may gang. Quhat Earle of *March* this was, I am not certaine, bot I finde that ane called *Simon Salmond*, is forefalted with *Alexander Duke of Albany*, Earle of *March*, *Mar*, and *Garrick*, Lord of *Annamdale*, and of *Man*, brother to King *James* the thrid. 8. Julii 1483. Bot the Lords of Councell esteemis the zeirly mailles, fermes and dutties of ane husband-land, to five markes, in *Registre*. 1. Decem. 1545. And ane uther husband-land lyand beside *Dumbar*, they esteeme it to fourteene bolles beare, and three bolles quheir, in *Registre*, 14. Feb. 1544. And ane uther husband-land to three pund. Swa I finde na certaine rule prescribed anent the quantity and valour of ane husband-land.

Forefalter of  
Alexander  
Earle of March  
&c.

## I

**I**N FANGTHEFF, *Lib. 1. c. 3*. ane Dutch word, quhair of I find diverse interpretations : For in the auld lawes of the *Brittons*, maid be King *Edward*, *Infangthiefe* is ane liberty or power pertaining to him quha is infest their with; to cognosce upon theft, committed be his awin man, taken within his awin dominion and lands; like as in findry auld buikes, containand



the lawes of this Realme. Inſangtheſe dicitur *latro captus de hominibus ſuis propriis, ſaiſtus de latrocinio*: and out-ſangthieſe is ane forain thieſe, quha cumis fra an uthar mans land or iurisdiction, & is taken and apprehended within the lands pertainand to him quha is inſett with the like libertie. In ſindry uthar buikes it is written, that inſangthieſe is ane liberty to ſit and decide upon thieft, committed within the iurisdiction of him quha is inſett therewith, be his awin man, or ony uthar man quhatſumever, taken therewith, within his awin iurisdiction. And out-ſang-thieſe, is power or liberty to reduce, replege, and bring hame to his awin court, all thieves being his awin men, and committand thieft within his awin bounds, quha are fugitive and taken within ane uthar mans iurisdiction, with the ſang, that is, hand havand, and back-bearand, *lib. 4. c. ſi quis 11. Quon. attach. c. nullus 22.* Quhilk ſang in the civill law, is called *furtum manifeſtum*. Bot ſindry uthers are in the contrair opinion, affirmand that it is not leaſum to ony man have ane liberty of out-ſang thieſe, to repledge or reduce his awin man, taken without his awin liberty for thieft to his awin court, and there to do juſtice upon him: Becauſe all thieves ſuld underly the law, and be judged be him, within quhais iurisdiction the thieft is committed: in ſik forme and maner, as is ſtatute anent ſlauchter, and punition thereof, *Ja 1. p. 2. c. 89.* Amongſt the Interpreters of the civill law, I find the like controverſie in this matter. *For. Bart. in l. Si dom. 48. Nu. 2. ff. de furtis. Quocunq; (inquit) in loco reperitur fur cum re furtiva, ibi poſeſt puniri: Veluti furtum faciens Florentia, Si reperitur in alia iurisdictione veluti Mediolani, cum furto, poſeſt a Mediolanenſibus puniri.* Quhais opinion ſindry Doctours followis, as writis Cheſſanauſ, *In conſuetud. Burgund. Rubr. 1. Verb. ſimple larrecin. Nu. 15.* Albeit ſindry uthers are in the contrair opinion, alleagand, that the thieſe ſuld be puniſhed in the place quhair he committis the thieft, *ut in additione ad Bartol. ju. d. l. 48.* Conforme to the quhilk, it is ſtatute be the Law of this Realme, that ane thieſe of ſtollen woodde, taken with the ſang in ane uthar Lords lands, ſuld be arreſtied with the woodde, and ſall ſuffer the Law in his court, fra quhom the wood was ſtollen.

*Furtum manifeſtum.*

*Jam. 1. p. 2. c. 34.* Mair-over ane thiefe is ordained to be punished in the place quhair the thiest was committed, because the crime may be best tryed there. *Stat. 2. Rob. Brui. c. 4.*

*Insensure curiam*, That is, quhen the Judge informis the suters in sik things quhair of they are ignorant. *Quon. attach. c. ubi ab aliqua 10.* Like as the Civill Law. *Judex potest supplere ea qua advocatis in jure desunt.*

*Iter*, from *Itinerare. b. e. Iter facere*, As *Iter Camerarii*, the Chalmerlane aire quhair of ane gud forme is writen and extant in the bulkes containand the auld Lawes of this Realme. *Iter Justiciarum*, the Justice aire, *Quia Justiciarius debet itinerare per regnum*, as it is writen in the English lawes: For he suld make course throw the Realme, for ministration of justice, and ride in competent and easie number, to eschew grievance, and hurting of the people. *Jam. 2. p. 6. c. 21.*

The forme of  
the Justice aire  
or Court.

The Justice aire suld be halden twise in the zeir. For King David statute and ordained, that the Justice and his depute suld hald twa head Courts zeirly. *Aff. Reg. D. c. Statutis domini 18. Quon. attach. c. Statutis 77.* And the Kings Justice, the Lords of the regalities, and also the Kings Baillies in his regalties, suld hald their Justice aires twise in the zeir. *Jam. 2. p. 3. c. 5.* Universally in all parts of this Realme, anis on the grasse, and anis on the cornes. *Jam. 2. p. 13. c. 94. Jam. 4. p. 3. c. 29.* And over all the Schires of the Realme, in the moneth of April, and October. *Jam. 6. p. 11. c. 81.* Baith in the In-land, and alsua in the Iles, South and North. *Jam. 4. p. 6. c. 59.* Because the Iles and inhabitants thereof suld be ruled be the laws of this Realme. *Jam. 4. p. 6. c. 79.*

Justice aire  
suld be halden  
twise in the  
zeir.

Justice aires suld be halden, for the increase of justice and tranquillity of the Realme, for stanching of combers, slaughters, rieses, thefts, extorions and oppression of the Kings Heger. And to the effect justice may be universally throw the haill Realme ministred, for punishment of the said crimes, sik authority, suld passe with the justice throw all the Realme, to the Justice aires, that trespassoures, sik as men-slayers, rrovers, thieves, and committers of uther enormities, in disobeying and hechtlyng of the Kings Lawes, may be punished without

without favour? *Jam. 4. p. 3. c. 29. Lam. 3. p. 13. c. 90.*

The Justice ire or Court being proclaimed at the Kings command, to be halden sik ane day as he pleaseth, and in the Head-burgh of the Schire: The Justice suld cause dittay to be taken up be his Clerkes diligently and faithfullly: For the dittay is the principall and chiefe substantiall point of the Justice aire; and the justice suld follow the ordour thereof.

For what causes Justice Courts suld be halden.

Dittay may be taken up, upon all crimes pertaining to the Justice, and his jurisdiction, as is manifest be the acts of Parliament. Reade the word Dittay in the Table of the saidis acts, and als upon the crime of lese-majestie, or treason: As the death of the King, sedition within the Realme: betraying of the Kings hoist or armie: Breaking of the Kings protection: Fraudfull hyding and concealing of ane huiird or treasure, wilfull fire, robbery, ravishing of weemen, murder, slaughter, theft, forestalling, all kinde of falsed in doing of justice, in money, assise, weichtes, measures, writs: And generally, all uther like crimes, quhilk be the Law are punished be death, or cutting off ane member. *Lib. 1. c. 2. leg. Mah. Mak. c. 3. Affrey. Da. c. nullus 17. de Indic. c. Placitorum 8. Mair-over, the Justice generall may set particular justice Courte upon ony manner of crimes, quhen need is, for punishment of particular faultes that occurrie. Sik as recent slaughter, mutilation, ravishing of weemen. Quhilk hainous and capitall crimes may be first criminally persewed before him. And as for depredations, ejectiōs, spulzies, the samin being first civilly discussed before the Civill Judge ordinar, thereafter may be criminally persewed before the Justice and his deputes, at particular diotts, set and appointed therefore, or be way of dittay in the Justice aire. *Jam. 5. p. 4. c. 33.**

Dittay, and for quhat crimes it may be taken up.

Dittay may be taken up twa maner of waies, privatly and publickly: For the Justice and his deputes may privily take up dittay, be privie inquisition of malefactours and their receptours, be the aith of three gud honest and faithfull men, and of the principall men: sik as the Chalmerlaine or officiat within ilk village or towne. *Stat. Alex. c. 2.* And mair-over, all Lords and headmen of all parts of this Realme, suld give up dittay

upon notour trespassors, without exception of ony person; to be taken and justified without remission. *Iam. 3. p. 13. c. 94.* And suld make trew relation there-ane to the Chancellor or Justice, quhen they sall be required, *Ia. 3. p. 14. c. 98.* And gif they be convict be ane assise in the contrair, they sall perpetually tine their court, in all tyme comming. *Lib. 4. c. assisa. 20. stat. Wilk. c. Assisa. 5.* Secondly, the Justice suld direct publickly the brieve of dittay to the Schireff: and his deputes, for taking up of dittay, quhair of the tenour followis.

*Wilhelmus &c. Iustitiarius Domini nostri regis generaliter constitutus, Vicecomiti & Ballivis suis de E. salutem. Quia indictamenta Regia, Deco duce, decimo die mensis N. proxime futuri, cum continuatione dierum, apud F. infra vicecomitatum vestrum levare intendimus, vobis precipimus et mandamus, quatenus summoneatis, seu summoneri faciat, legitimè coram testibus legalibus, de qualibet baronia, duodecim vel quindecim homines, ad hoc opus magis sufficientes. Et de qualibet tenendria, seu villa quatuor vel sex homines. Et de quolibet burgo, duodecim, vel sexdecim burgenses, ad hoc opus magis sufficientes, secundum quantitatem locorum & numerum personarum, in iisdem existens, cum feriando, fabro, molendinario, brasiatore, & sectatore, cuiusque baronia, villa seu tenendria. Quod compareant coram clericis nostris, pluribus aut uno, dictis die & loco, cum continuatione dierum, ad sursum reddendum indictamenta regia, Et faciendum ac subeundum, id quod in hac parte, juris ordo requirit. Et sitis vos vicecomes, & ballivi vestri, ibidem coram clericis nostris, dictis die & loco, cum continuatione dierum. Habeb. vobiscum summonitionis vestre testimonium, & hoc breve. Provideatis etiam pro expensis dictorum clericorum, quas vobis in primis computis, de exitibus iustitiaria reddendis, faciemus plenius allocari. Et hoc nullatenus omittatis sub omni pena, que competere poterit in hac parte. Datum sub sigillo officii nostri iustitiaria. Quhilk brieve, the Schireffe suld report at the day appointed, in the place, quhair the dittay suld be taken up, to the Justice Clerke, and twa witnesses at the least with him, for to verifie the execution of the brieve, to be lauchfully done, conforme to the command of the Justice. Conforme to the precept*

precept and command abone written; the Justice Clerke ane, or maa, convenis the day, and in the place appointed, and there remainis susteined upon the Schireffis expensis (quhilk is allowed to him in his compts, of the issues and profits of the Justice aire) and takis up dittay be the relation, and disposition of the persons summoned, for the giving up therof. Quhilk dittay they suld keip quiet, and suld nawaies reveale the samin to ony person, or translate it utherswaies then it was given to them, nor change names, ane for ane uther: nor put out ony furth of the rooles; bot lauchfully and trewly suld report and deliver the samin to the Justice, and his deputes. *Iam. 2. p. 6. c. 28.* Dittay suld be given up be vertue of the Kingis Commission, direct to Earles, Lords, Barrons, Knights, and speciall landed Gentlemen: And be foure of the Councell of every Burgh, quha fall make and give up dittay, be their awin knowledge, or be ane sworne inquest, or sworne particular men: upon all persons suspect culpable of the crimes and faults, pertaining to the jurisdiction of the Justice and his deputes. *Iam. 6. Parlia. 1. cap. 81.* Quhilk suld be likewise keiped quiet and reported, as said is, to the justice. And dittay being taken up, upon ony crime against ony persons: Neither judge, bot the Justice and his deputes may mell therewith. Like as the Wardaine on the Bordours, in his wardaine court, may nocht intermeddle with ony thing this pertaines to the dittay of the Justice aire. *Iam. 2. p. 11. c. 42.*

The dittay taken up, in maner foresaid, The Justice Clerke, at command of the Justice, makis ane Catalogue, containand the names of the persons indicted: And upon quhom dittay is given up, quhilk is called ane portuous. Together with ane uther Catalogue, quhilk containis the particular dittay, given and taken up, upon transgressours and malefactours, called *Traister*. Baith the ane, and the uther, is delivered be the Justice Clerke, to the Crowner: To the effect, that all the persons quhais names are containid in it, may be attached, and arrested be him to compeir in the Justice aire, to answer to sik crimes as fall be imput unto them. *Iam. 1. part. 13. cap. 139. Iam. 3. p. 14. c. 99.*

The portuous.

*Traister:*

The

Attachment,  
arrestments,  
and forme  
thereof.

The Crowner, in making his arrestment, suld passe to the habitation and dwelling place of the persons, given to him in portuous, and thereafter make proclamation at three Paroch Kirkes, upon festuall dayes, and take soveryty of them, sik as he will stand for to the King. And gif the persons swa arresteid, be nocht streinzieable, The Crowner sall arrest their guds, and put them in sure keeping, to the Kings use, quhill the said soveryty be found: Or else take their persons, and put them in the Kingis Castle, gif ony be within the Schire. And gif there be na Castle: he suld deliver them to the Schireffe to be keiped.

*Iam. 5. p. 3. c. 5.*

And main-over, because findry persons indited, usis to fle and absent themselves, swa that the Crowner can nocht apprehend them personally, to arrest them: In that case, it is sufficient that the Crowner cum to the dwelling place of the saidis persons, and make them warning, and charge to compear in the Justice aire nixt following, to answer to sik accusations of crimes, as sall be imput unto them. And thereafter upon the nixt Sabbath day following the said charge, the Crowner sall make open and publick intimation of his warning charge, and premonition, maid to the saidis persons, be their names, in their Paroch Kirkes. Quhill charges, premonitions, and intimations, sall stand to them for sufficient arrestments, the samin being lauchfully proven, as effeiris of the Law, *Iam. 5. p. 4. c. 33.*

And main-over, gif he cannot attache ony man personally, be reason of his absence, hee suld arrest all his gudes moyeable, and unmoveable, to remaine under sure pledges, and to be soorth wrrinmand to the King: In case he be nocht answerable to the Law, before the Justice. *Lug. Malc. Mak. cap. 1.*

The Crowner sall arrest at all times, alsweill before the cry of the aire, as after the samin, all them quha are given to him in portuous, be the Justice Clerke, and nane uthers. *Iam. 1. Parlia. 12. c. 139.* Bot all arrestments suld be maid before the time of the beginning of the Justice aire, and seat of justice, and na waies after the samin, *Iam. 3. Parla. 7. c. 58.* All persons charged to compear in the Justice aire, suld be attached and summoned



moned be the auld Law of the Realme, upon the space of fourtie dayes at the least. *Aff. Reg. Da.c. ad summonitiones* 19. And all be it na man suld be attached or arraisht, except dittay be given up upon him. *Stat. Alex.c.2.* Neverthelesse, in attachments or arreistments of ony person indited, na mention suld be maid of the cause or crime, for the quhilk he suld be indited; bot the same suld be concealed be the Clerke, and na waies revealed be him. *Stat. Wilh. c. statuit etiam 6. leg. Forest. c. Si aliquis* 52. *Quoniam attach. c. Si quis* 49. *Aff. reg. Da. c. 6.*

All the indwellers within the towne or village, suld concurre and assist the Crouner, in attachment or arreisting ony malefactor, to compeir in the Justice aire, to underly the Law. *Stat. Alex. c.2.* And sik like, quhen the Crouner receivis his portuous, containd the name of ony person indited, quha will not obey him, or quhom he dare not, nor is not of power to arreist, he sall passe to the Lord of the Barrony, quhairin that person dwellis: Utherwaies, gif he dwellis not within ane Barrony, he sall passe to the Schireffe of the Schire, and require them to be borch and soveryty, to enter the said person to the Justice aire; quhilk gif the Barron or Schireffe refusis, the Crouner sall require them to send their officers, and sufficient number with them, to fortifie and supply him, in making his arreistment, taking and keiping of the said disobedient person, quhill he be brocht to the Schireffe to be keiped be him, untill the time of the Justice aire. *Iam. 3. p. 14. c. 99.* Mair-over, the Crouner sall bring all persons arreisted be him, quha hes not, or may not finde borrowes to the Schireffe of the Schire, quha sall receive him in suerty and firmance, upon the Kingis expenses; and quhair it failzies, on their awin gudes, quhill the next Justice aire, and there present them to the Justice. *Iam. 3. part. 14. cap. 102.*

The Crouner, or makers of the attachments and arreistments, suld not intrömet or carry away ony guds or geare pertaining to the persons attached: Bot the Lord, or Officiar of the Towne, sall susteine them reasonably, upon the expenses of the said person, be the space of ane day and ane nicht. *Stat. Alex. c.2.* And gif the said person cannot be personally apprehended: The Crouner may remaine in his dwelling-house ane day and ane nicht, and suld be susteined with twa servands, and uther twa as witneses, and his Clerke suld have twa schillings, and sa may nocht take any mair

of the guds and geare pertaineing to the said person attached, albeit he be absent. *Leg. Malc. Mak. c. 1.*

Attachments and arreistments maid be Crowners & Serjeands, may be proven be them and witnesse. *Iam. 3. p. 7. c. 52.* That is, be the aith of the Crowner, and ane witnesse conforme to the auld consuetude. *Iam. 5. p. 4. c. 33.*

The Crowner shall have for his fee, for ilk man americiat or componand, ane colpindach, or thretty pennies. For him that is clenged be ane assise, the Crowner shall have na thing. For ane man filed or condemned, the Crowner shall have all the dantoned horse not schod, *leg. Mal. Mak. c. 1.* Quhilk is to be underitand, of dantoned horse, depute to warke, and not to the saddle; that was never schod, nor used to schoone. *Iam. 3. p. 14. c. 113.* The Crowner sould have all the cornes lyand in binges and mowes, casten and broken, all the in sight, utensile and domifile, within the inner part of the house: That is, within the cruik hingand upon the fire: And all and findry scheip within twenty: And all the Swine and Gaites within ten. *Leg. Malc. Mak. c. 1.* Attachments and arreistments being maid, or directed to be maid, or in the time of the making thereof: The Justice generall directs ane charge, called *præceptum itineris Iustitiar.* to the Schireffe and his deutes in maner and forme following. *Wilhelmus Iustitiarius domini regis generaliter constitutus Vicecomiti & Ballivis suis de E. salutem. Quia ordinamus iter iustitiarie domini nostri regis, Deo duce tenen<sup>r</sup>, de tota ballia vestra, apud E. Decimo die mensis N. proximè futuri, cum continuatione dierum. Vobis præcipimus & mandamus, quatenus summoneatis, seu summoneri faciatis, legitime & coram testibus legalibus, omnes Episcopos, Abbatas, Priores, Comites, Barones, & ceteros liberè tenentes, totius ballie vestra qui sectas debent. Ac etiam omnes illos, qui nihil nisi suas debent præsentias, qui de Domino nostro rege tenent in capite. Quod compareant coram nobis seu deputatis nostris, pluribus aut uno, dictis die & loco, cum continuatione dierum, ad persiciendum, subeundum, & determinandum, id quod in hac parte, juris ordo postulat. Præmoneatis etiam, omnes indictatos, tam de novo, quam de veteri. & suos plegios, qui nondum coram nobis comparuerunt, & iudicium subierunt, ac etiam illos, qui prosequi habent, vel defendere in dicto itinere, secundum formam juris. Quod compareant coram nobis, seu deputatis nostris, pluribus, aut uno, dictis die & loco, cum dicta continuatione dierum, ad persiciendum & subeundum, id quod in hac parte juris ordo requirit. Et sitis*

scitis vos Vicecomes & Ballivi vestri, ibidem, dictis die & loco, cum dicta continuatione dierum, habent, vobiscum summonitionis, ac promotionis vestre testimonium, & hoc breve. Provideatis insuper pro expensis nostris, bene & competenter. Quas vobis, in vestris primis computis, de exitibus Iustitiarie reddendis, vobis facimus plenius allocari: & hoc nullatenus omittatis, sub omni poena, qua competit in hac parte. Datum sub sigillo nostri officii Iustitiarie.

Quhilk precept and command is conforme to the Lawes of this Realme: Because all free-halders, haldand lands in chiefe of the King, within the Schireffedome, quhair the Justice aire is halden, suld compeir and be present, all excuse set aside, except the same be of seiknesse, the Kings service, or tinsell of lands and heritage: To certifie and informe the Justice and his deputes, in sik questions and doubts, quhilk incidently arisis, as emergent, and of before could not be fore-seene nor knawen. *Ass. reg. Dac. stat. 18. Quon. attach. c. stat. 77.* Sik as Bishops, Abbots, Priors, Earles, Barrons, and uther free tennents, being summoned and warned to that effect, *Quon. attach. c. ad summonitiones 78. l. 4. stat. 19.* And they being lauchfully warned and not compeirand, incurris the paine of the unlaw of Court. *Lib. 4. c. stat. c. 19.* And may be punished as favourers of the transgressours, and airt and pairt with them. *Iam. 4. p. 3. c. 29.* And they and all uther the Kings lieges, suld cum to the Justice aire, and all uther Courts, in sober and quiet maner, and suld not bring with them maa persons then ar dailly in their houshold and families. And being come to their Innes and ludgeing, suld lay their armour and weapons from them, and use na weapons bot their knife. *Iam. 2. p. 12. c. 83.* Mair-over, all Lords, Spirituall and Temporall, Barrons and uthers, cummand to the Justice aire, suld na waies mainteine, fortifie, supply, defend, nor be Advocates, nor stand at the Barre, with manifest traitours, men-slayers, thieves, rieviers, nor uther trespassours, nor persons perteyning to themselves, or uthers: Saifand, it sall be leasum to them in sober waies, to stand with their kin and friends, in defence of them, in their honest actions. *Iam. 3. p. 14. c. 98.* Quhen the Justice aire is to be halden upon the Bordours: The Wairdainies, within their Wardainries, and their deputes, with the free-halders of the Schireffedome, being warned thereto be the Schireffe, be open proclamation, suld convoy the Justice and his deputes, to the place appointed, for halding of the Court: And accompany them, in-

during their residence, and untill they be out of the boundes of their Schireffedome, and received be the nixt Schireffe. *Iam. 6. part. 11. c. 81.*

In the Justice aire, suld compeir all persons attached and arrested, conforme to the dittay given and taken up upon them, quhairof, some were arrested of before, to have compeired in the Justice Court proceeding, already ended and expired, and compeired not in the samin : quhais names are given to the Crowner, to be of new attached and arrested, to the aire following, as of before : Uthers are of new indited, upon quhom na point of dittay was taken up, in ony time by-gane, quhais names are comprehended in ane Catalogue, called Portuous. All the foresaids persons indited, baith of auld and of new, suld be attached and arrested be the Crowner, to compeir and underly the Law, the time of the Justice aire, as is manifest be the precept foresaid, direct be the Justice generall, to the Schireffe.

All persons arrested, that may be apprehended, the time of the aire, in the Tolbuith, or in the towne, quhair the Justice is, fall be taken and delivered to the Justice, to be justified for their crimes and trespasses. Swa that the arrestment be maid before the time of the beginning of the Justice aire, and seat of Justice. *Iam. 3. p. 7. cap. 57.* And quhair lands lyand in sindry Schireffedomes, are annexed and united in ane Barrony : The inhabitants thereof, fall answer in the Justice Court, quhair the lands lye, and the Lord, or Proprietar of the lands annexed, givis presence or service, in the court of the Schireffedom, within the quhilk the Barrony lye, to the quhilk the lands are annexed, *Ia. 4. p. 6. c. 93.* For in this case, respect and consideration is had to the naturall situation of the lands, and to the jurisdiction, within the quhilk they lye : rather nor to the imaginar, and civill forme of lying, of the lands be annexation.

Inhabi-  
tants of  
annexed  
lands.

Steward-  
ries and  
Baillieries

Attour, all inhabitants of Stewardries and Baillieries, fall cum to the Head-burgh of the Schireffdomes, quhairin they lye : And within the quhilk Head-burgh, the Kings Justice aires are halden. *Iam. 6. p. 11. c. 81.*

The Judg.

The Judge in the Kingis Justice aire, is the Kingis Justice generall, or the Kingis Bailly, in his regalles, havand lauchfull power and commission granted to them. *Iam. 2. p. 3. c. 9.* For the King, or the Justice generall, may make aucht deputes, quha with ane depute

depute of the Thesaurar, and ane uther of the Justice Clerke, suld passe severally throw the aucht quarters of the Realme, and hald Justice Courts. *Iam. 6. p. 11. c. 81.*

The Justice general, suld have for his sustentation, ilk day of the aire, five pound. Like as the Justice Clerke suld receive for ilk man clenged be ane assise, and drawn furth of the Rolles, foure pennies. And for ilk man amerciat, or componand, ij. s. *Leg. Mal. Mak. c. 2.* For ilk Actorney and Commission, twa shillings. For ilk man quha producis ane remission, twa shillings. For ilk man that cummis in the Justice will, twa shillings. For ilk man convict and sled, twa shillings. For ilk Letter of witnesse, sex shillings, aucht pennies.

The Justices expenses.

The Schireffe suld be present, as he quha is warned be the Justice precept to answer to all the points thereof: And touching the execution of his office, togidder with the Crouner, quha suld answer for his attachments and arreistments, and verification thereof: And the Schireffe, with the Crouner, suld thoill ane assise, the last day of the aire, anent the using and execution of their offices, to quhom justice suld be ministrat, as they sall be found innocent or culpable. *Iam. 3. p. 14. c. 103.*

The Schireffe.

The crouner.

1 The day of compeirance being cum, to the quhilk the Justice aire is cryed and proclaimed: The Justice and his deputies, suld compeir with all uther persons, charged and commanded to concurre and assist with them. At the quhilk time, the sutes suld be first called, with their Lords. For albeir the Saitures compeir, nevertheless, the Lords and Maisters are obliged likewise to compeir, and give presence to the Justice in his aire: They being lauchfully summoned and charged to that effect, be open proclamation, and be the Justice precept abone written.

The form of the Court,

The sute of Court.

2 The Commission and power given to the Justice, suld be produced and red: And gif the Commission be given and granted to maa persons nor ane conjunctly, they suld be all present; utherwaies it is na lauchfull court. Bot gif they be constitute conjunctly and severally: It is sufficient that ony ane of them be present. And mair-over, the Justice may not make and constitute deputies or substitutes under him, except he have special power in his commission, to do the samin. *Lib. 4. c. si unus 27.* 3 Thirdly, the Judge suld begin and fense the Court, conforme to the common ordor and consuetude used and observed. *Iam. 6. p. 11. c. 81.* Quhilk suld

Commission.

The fensing of Court.

The dep-  
ster.  
The sutes.

be done at eleven houres before noone. *Iam. 6. p. 11. c. 86.* 4 Fourthly, the Court beand affirmed, the Dempster suld be called and caused to be sworn, that he sall lealely and trewly use and exerce his office. 5 Fifthly, the sutes suld be called. *Iam. 6. p. 11. c. 81.* Zit againe as of before ilk man, twise with their Lords and maisters and the absents decerned to have failzed, and therfore suld be unlawed, and gif baith the suiter and his Maister be absent, ilk ane of them be themselves suld be americiat.

The assise.

6 Sixtly, the assisors being summoned be ane precept direct be the Justice to that effect, suld be called, ilk person under the paine of fourty pounds, and the Justice may cheise ane or maa, as he pleasis, of the best and maist worthy of the cuntry, before quhom the bail accusation, reasoning, writs, witnesse, and uther probatyon, and instruction quhatsoever of the crime, sall be reasoned and deduced in their presence; and also in the presence of the partie accused, in face of Judgement. *Iam. 6. p. 11. c. 60. 61.* And it is to wit, that he quha givis up dittay upon ane uther, suld not passe upon his assise. *Iam. 1. p. 4. c. 50.*

7 The Justice suld proceed in his Court, and put the offenders, gif ony be already in prison, to the knowledge of ane assise, and minister justice upon them, as they sall be found innocent or culpable. *Iam. 6. p. 11. c. 61.*

The per-  
sons at-  
tached.

8 He sall call thereafter the pledges and cautioners of persons attached, quha faund soverty before the Justice ony time preceeding, at ony particular diet or court, to compeir the thrid day of the aire, or sooner, upon fiftene daies warning. *Iam. 6. part. 11. cap. 81.*

Pledges of  
entres of  
uthers.

9 This being done, the Clerke sall visit and consider the baill rolles and journal, and call all them quha are absent from the aires preceeding. Upon quhais heads and names is writte, *Prima dies, secunda dies, tertia dies*: Be the quhilk, he understands, fra quhat aire or court they were absent. And that they may be therefore americiat, ilk ane of them be them selfe, be reason of their absence. And gif the saids persons nocht compeirand of before, now compeiris and are present: The Clerk sall luik the auld dittaies and rolles, and accuse them, conforme thereto, in the best manner he may gudly. And gif there be na particular point of dittay, or accusation, he sall lay common dittay to their charge.

10 Thereafter the Justice sall call the persons newly indited  
and



and arreifted ; And gif they or any uther of the arreifted perfons foresaidis, compaire, they fuld be prefented to the Court, and to the Schireffe, quha fuld answer for them, untill iustice be done upon them.

11 They quha are attached, and compeiris not, may na waies be accused for their not compeirance, bot be the Kings service, quhilk fuld be verified be the Kings letter, produced in Court : or be reason of seikneffe : Quhilk be the auld Law, was tryed be ane assise, quhidder it was trew, or feinzied : Albeit the partie was absent. *Stat. 2. Rob. B. c. 5.* Bot now it fuld be proven and verified be the Minister of the Paroch, within the quhilk the person excused dwellis : And be twa witnesfes personally compeirand in judgement. *Iam. 1. p. 9. c. 114.* And concerning perfons absent, it is generally ordained, that every Barron and Free-halder, fall answer in the Justice aire, for his awin men, dwelland upon his awin proper lands, tackes, steadinges, rowmet, and Barronies, and fall be halden to enter to them, or else answer to the King, for their unlawes. *Iam. 5. p. 3. c. 6.* Quhat is the unlaw in the Justice aire, *vid. Amerciamentum.* Bot for the better understanding of the Lawes, concerning fugitives and absentes : It is to wit, that the auld Lawes of this Realme, gif the party defender being lauchfully warned compeired not, bot send ane effoinzie or excuse ; the samin being reasonable, was received and admitted to the Judge, three findrie dayes or Courts: And gif he compeired afterward, and verified not his effoinzies to be lauchful, he was distreinzie and poyned therefore. Bot gif he neither came, nor send ane excuse. The partie persewer compeired at lauchful day and time of Court, and offered him reddie to persew, quhilk he did be the space of three dayes. And the thrid Court beand by-past, the defender was summoned to compeir the fourth day. The quhilk fourth Court was peremptour, because *sentence definitive* was given against him, conforme to the claime and petition, gif he compeired not. *Lib. 1. c. summonitus 9.* The like fornie and ordour of proceffe was observed in Justice Courts. For mention is maid of the first aire. *Iam. 3. p. 13. c. 94.* And of the second aire. *Iam. 5. p. 4. c. 32.* And of the fourth Court. *Iam. 3. p. 14. c. 101.* And gif ony person indited, and lauchfully attached, compeired not, the said three Courts, his pledge or law borgh was called and amerciat for the first, second, and thrid Court, and at ilk time after ilke ane of the

The  
fourth  
Court.

the saids Courts, the said pledge was poynded and distreinziēd, and the distresse or poynd was letten to borgh, and made free under caution, that the said person indicted, suld compeir in the nixt aire following, to underly the Law. And gif he was absent at the fourth Court, the peremptour doome was given against him : That sik ane man was in ane amerciament, and at the Kings Horne, and his lands and all his gudes escheit to the King, except he come within fourtie dayes, and did bide the Law . And thereafter the Court beand ended, the said peron was denounced rebell, and put to the Horne openly at the mercat croce of the head burgh of the Schire. Quhilk forme of Proceffe, was sa lang and prolix, that in mony zeires parties hurt and grieved, get na justice : And trespassours and crimes passed unpunished : quhilk was the occasion to mony persons to commit crimes, trusting na hasty punition nor correction to follow. Therefore King James the fifth, statute and ordained, that the Proceffe of Justice aire, and Justice Courts, suld be peremptour at the second aire or Court, swa that fugitives not compeirand at the second aire or court, suld be denounced the Kings rebell, and put to his Horne, and all their guds his escheit. *Jam. 5. p. 4. c. 32.*

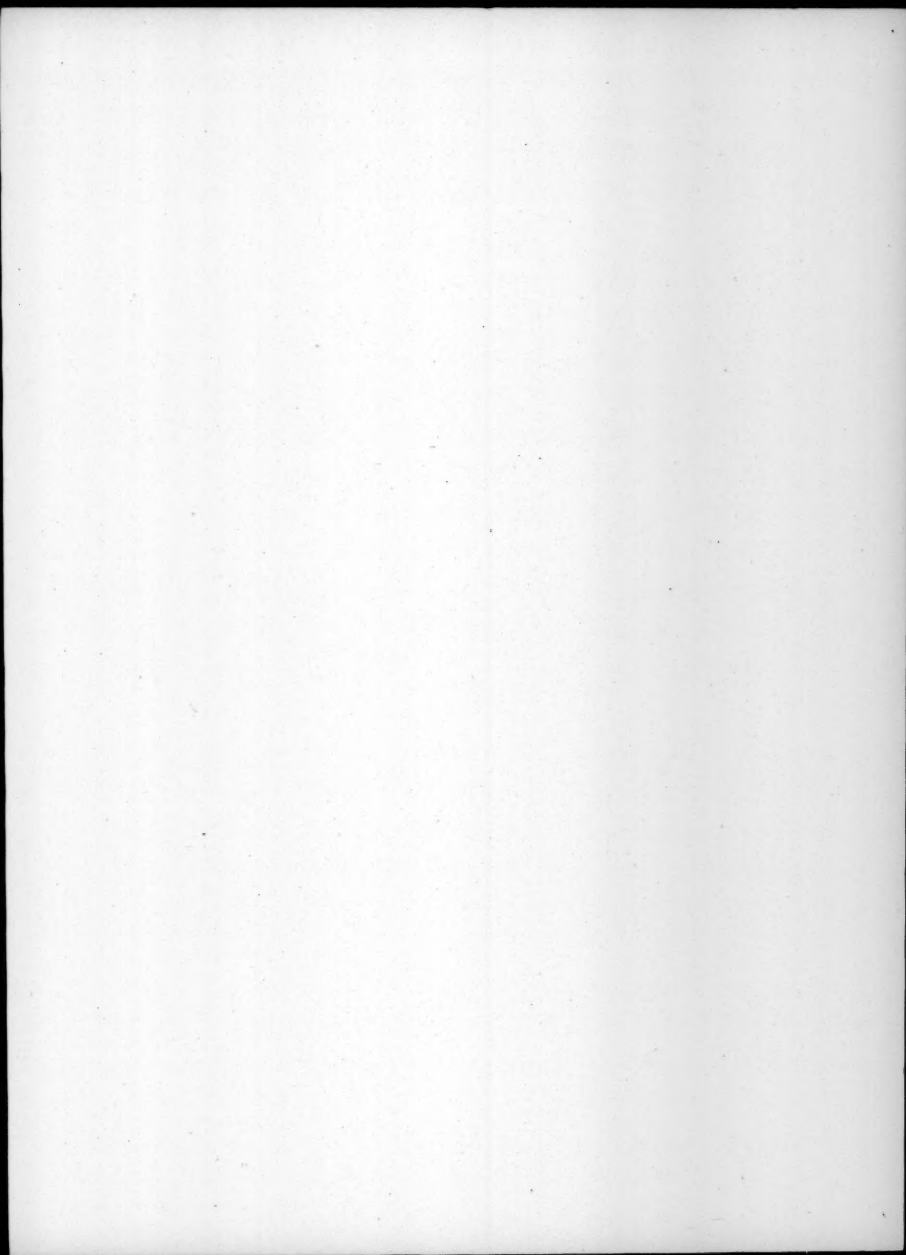
The secōd  
Court.

12 Hereafter the Lords of Regality may desire their men to be remitted to their awin Justice Court, and replege them, schawand their commissions, power, and payand therefore; and livand ane caution behind them, called *Cutrach*, quha sal be acted and oblisched in the Justice Court, that justice sal be done and ministrat in the Court of the regality, to the party compleinand upon the peron repleged, *vid. Cutrach.*

Replegia-  
tion of  
Burrowes.

13 The Justice or his Clerkes, sal demand and speare at the Baillies of Burrowes, gif they be reddy to present ilk burges within their burgh, indited to the Kings Justice aire : Quhilk persons suld al enter personally before the Justice, under the paine of ane unlaw and amerciament of Court : quhais names the saids Bailles sal put in writ, and deliver the samin to the Justice or his Clerkes. And gif they wil borrow or repledge their saids neighbours, they sal schaw their commission, and pay therefore : And thereafter they sal draw, or oblisch themselves, their commission, and burgh in pledge : That thay persons quhom they repledge, and quhais names they give in writ, sal he furth-command, and answerable to the Lawes, and challenge of the Justice. At the

quhilk





quhilk time, hee and his deputies sal assigne to them ane certaine day, to underly the Law, either in that aire, or thereafter, quhen he sal think speedful. And at the samin time, it is leasum to the Kings Justice, sittand in the principall burgh of the Royalty, to give ane assise to all the saidis burgeses, repledged of their awin nichtbours, that best knawis the veritie, dwelland in the same burgh with them. And gif there be not ane sufficient number of the said con-burgeses: It sal be leissul to choose ane assise of the burgeses of the said Head-burgh, quhair the Justice and his deputies sittes, as hee sal thinke expedient. *Jam. 4. part. 1. cap. 1.*

14. Gif the partie accused compeirand, alleagis to his re-  
 mission or respet, hee sall produce the samin in Court, and <sup>Remissions, or</sup> respettes.  
 sall finde sicker borrowes to assith and content the partie  
 compleinand, within fourty dayes following: Quhairup-  
 on ane act is maid in court, quhairby he and his cautioner  
 are obliged to assith and satisfie the partie, within the space  
 foresaid: Quhilk is called the act of Adjournall. And gif  
 he refusis to finde caution, he sal remaine in the Kings pri-  
 son, quhil the said fourtie dayes be run, and then his remis-  
 sion sal be expired, and of na value. *Jam. 2. p. 14. cap. 75.*  
 And in this case, quhen ony man takis him to his remission,  
 respet, or composition, in the Justice aire, or Justice court,  
 and findis sovertie to assith the partie: It is leasum to the  
 partie to call the said sovertie before the Lords of Councell,  
 conforme to the act of Adjournall, maid there-anent. *Jam. 5.*  
*p. 3. c. 7.* As gif ony man becummis sovertie for ane uther,  
 anent spuilzie committed be him, and for restitution or sa-  
 tisfaction to be maid be him therefore. He as sovertie may  
 be called and conveyed for the gudes spuilzied. For the vio-  
 lent prices thereof, for the damage, skalth, and interest su-  
 steined be the persewer, throw the committing of the said  
 spuilzie, 10. *Martii 1500. William Keith, contrair the Earle*  
*of Caithness.* And the said sovertie being condemned, hes  
 gud action against the principal party for his reliefe, be ane  
 simple

simple charge upon sex dayes warning, without peremptour summonds, or ordour of table, 11. Julii 1543.

15 Gif the person attached compeiris in the Court, and beand accused, hes na revelant exception, or reasonable defense, of necessity he suld passe to the knowledge of ane assise, conforme to the Lawes of the Realme. At the quhilk time, the haill assisours suld be called, and the absents americiat. *Iam. 6. p. 11. c. 76.* And the partie accused, suld be heard to propone al and findry his lauchful defences, against the haill assisours, or ony of them, to repel them, as he may best of the Law, and stay them to passe upon his assise. At this time the person compeirand and accused, cummis in the will of the Justice, or he is clenged be ane assise: or he is filed and convicted. Gif he submittis himselfe, and cummis in will, It is l asum to the Justice, to draw him furth of the Rolles, and to declare his wil, and to charge him to pay ane composition, or sik ane summe of silver, as he pleasis to modifie, after the quality of the crime and person, for up-taking and in-bringing quhairof, the Justice aire being ended: The Justice directis his precept, called, *Præceptum extrahitius itineris iustitiarie*, in this forme.

Persons cum-  
mand in will.

The precept of  
extracts.

*Wilhelmus iustitiarius generalis, Vicecomiti & Ballivis suis de F. salutem. Quia in itinere iustitiaria Domini nostri regis, per nos ultimo teni. apud F. d. cimo die mensis. N. Anno Domini, &c. Diversi fuerunt americiati, & pro suis delictis convicti, & in nostra voluntate positi. Quare vobis precipimus & mandamus, quatenus de infra scriptis personis subscriptas summas levare faciatis & pro eisdem secundum formam juris distringatis. Et primo de N. summam &c. De quibus quidem summis solvatis pro expensis nostris in dicto itinere summam N. Residuum vero dictarum summarum solvatis cofferariis Domini Nostri Regis: Vel cui vobis assignabitur infra tempus legitimum, hoc est infra quadraginta dies primum diem dicti itineris proxime & immediate sequen. Et hoc nullo modo omittatis.*

Persons char-  
ged.

Quhen ony person is clenged be ane assise, the Justice directis his Testimoniall, called *Litera testimonialis de bo-*  
mine



mine mandato per assisam, in manner following.

*Wilhelmus iusticiarius generalis, universis & singulis ad quorum notitias presentes littera pervenerint, salutem. Noveritis quod comparens coram nobis in itinere iusticie Domini nostri regis tenet, apud F. decimo die mensis. N. Anno Domini &c. I. de B. indistatus, & per rotulos Regios calumniatus, de arte & parte talis furti, vel talis rapine, vel incendii &c. Quam quidem calumniam dictus I. in facie iudicii penitus denegavit. Et super hoc ad recognitionem assisa utique se submitit. Qua quidem assisa hinc inde diligenter consultata. Et plenius avisata, dictum I. a dictis calumniis sibi impositis, quitum declaravit penitus & immunem. Et hoc omnibus quorum interesse poterit, notum facimus per presentes. In cuius rei testimonium sigillum officii nostri appendi curavimus.*

All thay persons quha commis in wil, and are drawn furth of the Rolles, and also they quha are cleged be an assise, can na waies in ony time thereafter be called or accused for that crime, for the quhilk they cum in wil : for anis quit and cleged, ay quit and cleged. Zit nevertheleffe, gif ony person be accused criminally of lite and lim, at the instance of ane uther private man allanerly, and is cleged and maid quit: The Kings Justice and his deputes, be reason of their office, may thereafter take inquisition anent the said crime, and in the Kingis name accuse the committer thereof, conforme to the Law. Notwithstanding that of before, he was cleged thereof be an assise. *Lib. 4. c. si querela 58.* Because the action or pursute of ane privie partie, prejudgis not the King in his richt or entres, competent to him, be reason of his Royal power. And therefore the Thesaurar, and the Kings Advocate, may persew all malefactours, albeit the parties desist, or privately agree amangst themselves. *Iam. 6. part. 11. cap. 76.*

Quhen trespassours and malefactours are convict, as breakers of the Statutes, and actes conteinand dittay, they aucht and suld be punished according to justice, and conforme to the tenour and paines contained in the acts broken and contraveened

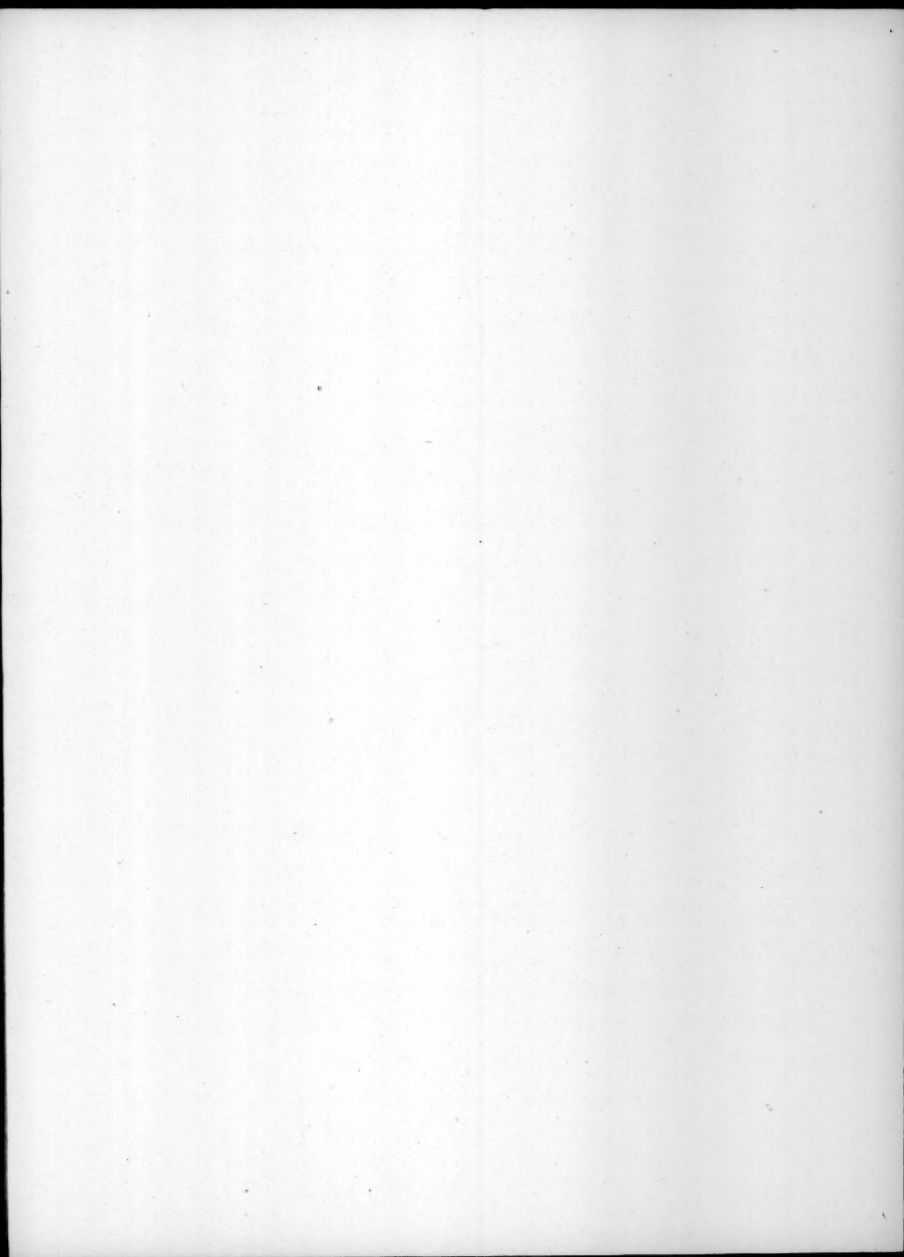
Persons filed  
and convict.

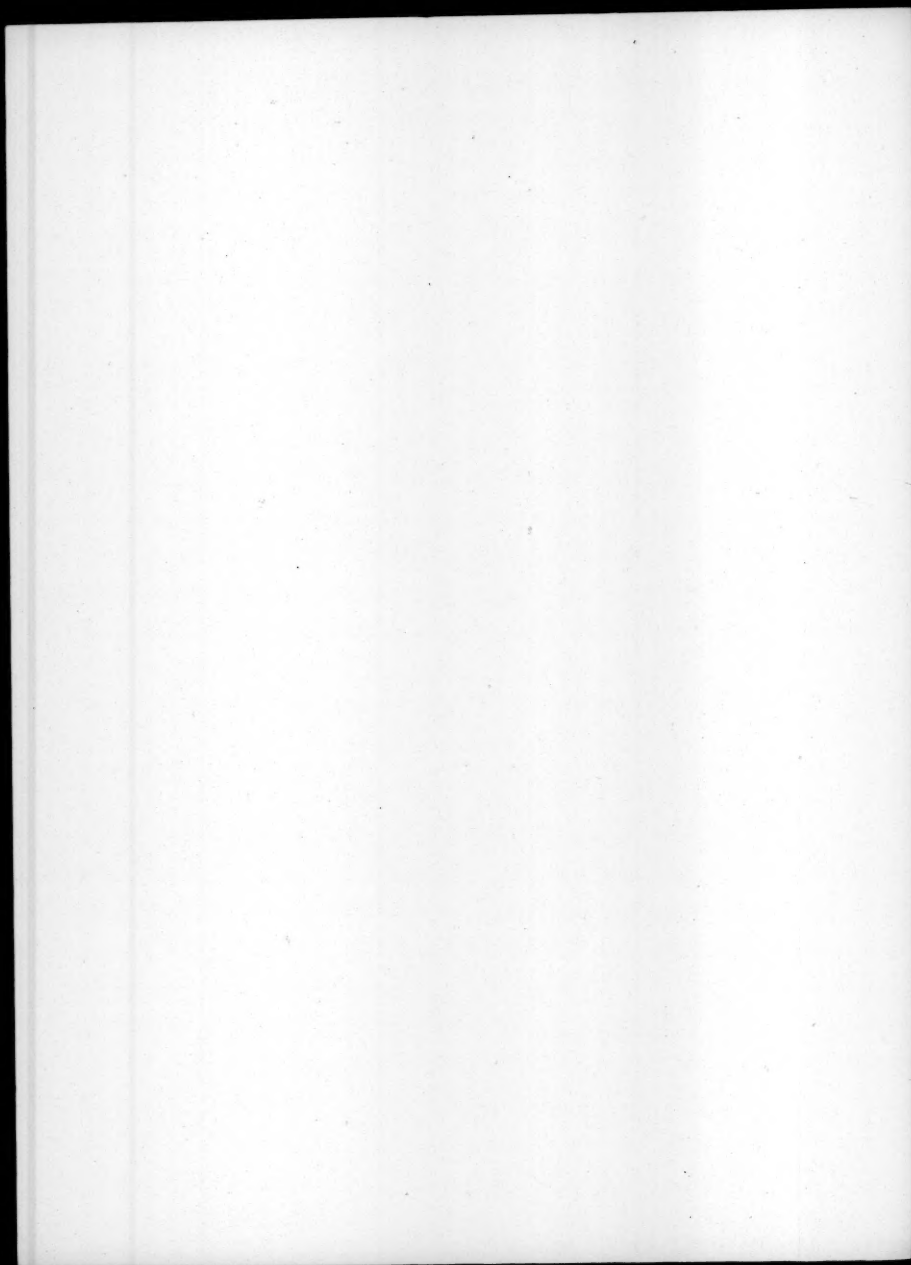
traveened be them, *Iam. 4. part. 4. cap. 45.* And sa gif the paine contained in the act be pecunial, they suld pay the samin. And gif it be capital, they suld underly and suffer the samin, except the King give them remission and special grace there-ament. As for example, landed men, lauchfully and ordourly convict of common thieft, recept of thieft, stouth, or riese, incurris the paine of treason, and therefore, suld be punished be tinsel of life, and confiscation of lande and guds, *Iam. 6. part. 11. cap. 50.* Alwayes the Crowner may not intromet with ony guds or geare pertaining to ony trespassour, convict and condemned to the death, at his awin hand, until the Schiereffe or his deputes passe or sende with him, and visie al the hail gudes, and deliver to the Crowner sa-meikle, as hee suld have be reason, and as perteinis to his office, and bring the remanent to our Sovereaine Lord, and his Thesaurar. *Iam. 3. p. 14. c. 102.*

The end of the  
Aire.

The Justice aire beand ended; The Justice sall deliver the extract thereof, subscribed be him to the Thesaurar, quha sal cause take up the summes contained therein, and make compt thereof in the nixt Checker, in the quhilk compt sal be allowed the expenses and charges of the Justice, his deputes and clerker, as the samin sal be modified be the Lords, Auditours of the Checker, *Iam. 6. p. 11. c. 81.*

LAST





**L**AST Of gudes, how meikle it conteinis, *vid.* Serplait.

*Let* lands to borgh, *dimittere terras ad plegium*, *vid.* *Plegium*, *vid.* *Recognitio*.

*Lex Apparens* *lib. 4. c. 4. de iudic. c. 24. Leg. Forest. cap. Item in placito. 16.* Signifies the law concerning singular battell. And *lib. 4. c. 1.* It signifies ane inquisition maid, or taken be ane inquest or assise. And in the Law of Normandie, *lib. 9. c. 10.* It is called *Loy apparissant*. And *lib. 8. c. 3.* All quarrells of possessiones or moveables, quhilks are called *Chattel*, or lands and immoveable gudes, suld be decided by common and simple quarrells, conforme to ordour of law, or belawes *Apparissantes*, quhilks are determinat, ather be singular battell, or be ane inquest of the cuntrie, utherwaies called, *Loy recognoissant*. It is likewise called, *lex paribilis*, a *parium pugna*, vel *concordatio*, ne, from the combat of peeres and *Campiones*: or *lex duellorum*, quhilke law is ungodly, and not to be used among Christians, *Cuius lib. 1. de feud.*

*Liberatio*, Ane fee given to ane servand, or officiar, quhilke is called ane *Liverie*, *leg. Mal. Mok. c. 4.* *Feodum* or fee, is commonly of silver and money, and ane *liverie* is of meate or claithes. Bot this distinction or difference is not perpetuall.

*Liberum Tenementum*, is commonly and properly called, *Frank teneiment*, or *Life-rent*. In Latine, *Ususfructus*, conforme to the daily practique of this Realme. And neverthelesse, *Liberum tenementum*, signifies the property, fee, or heritage. *Donatio liberi tenementi*, & *concessio hereditatis*, is baith ane, *lib. 2. c. potest 21.* *Tenementum Regium*, is callit the Kings heretage. *Lib. 2. c. Dicitur. 74.* In the quhilke signification, *Minor dicitur esse in*

## De verborum significatione.

*tenemento Lib. 3. c. Remanere 26. Et placitum de recto & liberis tenementis per breve domini Regis de recto debet terminari. Lib. 1. c. 6. And King Alexander gave and dispensed to Duncan Forbeys, tenementum de Forbeys. That is, the lands and heritage of Forbeys, quhilk Charter is zit extant. vid Tenementum.*

**LIGEANTIA**, *Lib. 2. c. Fieri. 61.* From the Italian word *Liga*. anc League, bande, or obligation: as *homiligijs*, anc man, quha is obliged and bound, fra the quhilk *cummis*, *Alodium*, *in lebris*, *feudorum*, *quasi possessio sine Leodei* *Cujus possessor nemini, est leodes sine ligum.* And *ligeantia*, is the mutuall band or obligation, betwixt the maister and the servand. *Lib. 2. c. pluribus. 14. lib. 3. c. Si quis super. 36. Vid. Affidatio.* Item, the mutuall band and obligation, betwixt the King and his Subiects, quhairby we ar called his lieges, because we ar bound and obliged to obey and serve him: And hee is called our liege King, because he suld maintene and defend us. And the Doctours of the Law writs: *Quod imperator dicitur dominus totius mundi, eodem modo quo rex regni. l. bene a Zenone. C. de quadr. prescripi.* Quhilk suld be understand concerning the defense and maintenance, and not anent the propertie. *Quia reges non sunt domini privatarum possessionum. Glos. in L. Barbarius de Offic. prator.* **Homagium ligium**, *vel cum ligeantia factum*, Is quhen the vassal absolutely makis homage to his superiour, against all and quatsumever persons, without exception of ony man, quhilk suld be done to na vther, bot to the King allanerly. **Homagium non ligum**, *vel sine ligeantia*, is that quhilk the vassal makis to his Over-lord, excepting and reserving the fidelitie, quhilk he aucht to the King or his elder overlord or maister. *Pib. 2. c. fieri 61. Chessanaui in Consuetud. Burgund. Rubric. 3. sect. 3. Verb. & homag. Nu. 10. cum. seqq.* Quhilk vassal is called, *vassallus non homologus*. Lik as the uthir is *vassallus homologus*, in quhais aith na person is excepted, *Cuiac. lib. 2. de feud.*

Homagium  
ligium.

Non ligium.



M.

**MACHAMIVM**, *Mechantum*, from the auld French word *Mehaigne*, quhilk wee call Mainzie, hurt, mutilation, demembration, or the losse or rinfell of ony member of ane mans body: or the breaking of ane bane, or quhen ane mannis harne-pan, or ony parte thereof is cutted away, or dung in. *lib. 4. c. 4. Res omni mahamio dicitur res minus sana. lib. 3. c. ex causa 8.* Be the auld Law of this Realme, he quha is mainzied, hes ane iust cause to excuse himsef fra singular battell, and zit he will be compelled to purge, clenge, and defend himsef, *Per ignem & aquam. lib. 4. c. 4. cap. Si quis pro latrocinio 15. Quoniam attach. c. Si quis 58. lib. 4. c. assisa 20. stat. Alex. c. quicunque 31.* Quhair of the power perteinis not to ony Baronne: For na subiect may compel ane uther to purge himsef be fire or water. *Stat. Alex. c. praterea. 32.* This kinde of purgation was ane maist scharpe and extreame kinde of purgation and triall: Like as we daily use in common proverbe; quhen we say be way of menacing and boasting, that we sail gar ony person pas *per ignem & aquam*; that is, to suffer and underty that kinde of triall *Iudicium Dei*, that is maist severe and extreame. It is called *iudicium Dei*, the judgement of God, as knawin to him allanerly. *Iter. Camer. c. cum hoc. 25.* And was in great use amongst the Longobards, as is expounded be *Hotomannus de feud. c. 44.* *Ordalium.* In the auld Saxon tongue, and zit in Dutche, it is called *Ondell, ordalium*, from, *or*, quhilk they use as *privatona particula*, and *Del*, quhilk signifies ane parte or portion: quhilke worde wee use in the same signification: and *Iwa, Ordeil*, signifies innocent, quha hes na parte, or is not participant of the crime quhair of he is accused. Purgation be the fire, is quhen ony man with bair feet, passis throw the fire, without ony harne or hurte, or quhen

Purgatio per  
ignem.

Purgatio per  
aquam.

Purgatio  
vulgaris.

ony man dois carry and beaie in his bare hande, hoat  
buinand Iron, without ony hurte of his hande, quhilke is  
called, *Ferri candentis iudicium*, in the quhilk case, hee  
was decerned to be Ordeil, or a waies participant of the  
crime. Vtherwaies, gif his fute or hande was hurte be the  
fire, or hoate Iron; hee was condemned, as participant  
and fowle of the crime. And sik-like, *Purgatio per aquam*,  
is quhen ony man suspect or accused of ane crime, was  
casten in hoate or cald water: And gif hee passed to the  
bottome, without ony hurte of his bodie, hee was decer-  
ned Ordeil, and innocent. Bot gif hee did not fall to the  
grounde, bot did swimme above, hee was condemned as  
fowle of the crime; as is written in the auld lawes of  
the Brittones. *Verb. Ordalum*. And be *Cuiac. lib. 2. de  
seu. Purgatio vulgaris* is discharged be the Cannon Law.  
*c. dilecti. Extr. de purgatione vulgari. c. ex maram. S. de  
purgat. canonica*. And likewaies, be the lawes of this  
Realme it is forbidden as unlesum, *Aff. reg. David. c. Stat.  
etiam. 30. In fine ubi professam. lege aquam. Stat. Alex. c.  
Stat. Dom. 6.* And be the law of God it is commanded,  
that nane suld suffer their sonne or daughter, to go throu  
the fire. *Deut. 18. 10.*

*Maneleta*, ane kinde of evill and Pestilent herbe;  
quhilk growes amangst the cornes, called *Guld. de  
Iudic. c. 7.* The Law of *maneleta*, or of the Guld, was  
first institute be King *Kenneth*, quha ordained that hee  
quha throu his fault or negligence, suffers sawen lands to  
be filed with noysome herbes: For the first fault, fall pay  
ane Oxe: For the second fault, ten Oxen: and for the  
third fault, salbe remooved fra the possession and labour-  
ing of the lande. *Hector Boetius. lib. 10.* And gif ane  
mailer or tennent, filis the land with guld, and will not  
clenge the famin; hee may be punished as ane seducer,  
quha bringis or convoyis ane armie within his Maisters  
land, to wrack and destroy it. *Leg. Forest. cap. Si natiuis  
28. de Iudic. c. 6.* And gif thy awin native man, or bond-

man

man (*nativus sum*) hes guld within thy land: for ilk stocke or plantd thereof, hee shuld paye ane Mutton, as ane unlaw. *Leg. Forest. d. c. 28. de Iudic. cap. 27.* The quhilk Lawe and constitution is keiped and observed within certaine partes of this Realme; quhair the tennent sufferand the Gulde to grow amangst his Cornes, payis ane Wedder or Scheip to his Maister.

*Manerium*, landes laboured with hand warke, *Quasi manerium in manu*. Ane mainnes, or domaine landes: Or *terra dominicales*: Because they are laboured and inhabited be the Lorde, and proprietar of the samin. Gif there be twa mainnes perteing to ony man that is decessed: The principall mainnes shuld not be divided, bot shuld remaine with his aife and successour, without division: togidder with the principal messuage. And full satisfaction shuld be maid to his wife, or relict therefore, soorth of the seconde mainnes, or vtherwise. *lib. 2. c. Dos autem. 19. de Iudic. 112.*

*Mansus*, A *manendo*, ane habitation or dwelling place, speciallic quhair husband-men, labourers of the ground, dwellis a landwart: to the effect they may labour their land mair commodiously. *L. Si plures. Nu. 9. C. de condit. insertis. Molinens in Stil. cur. part. 3. c. 85.* Bot Bartol. in *l. Si ita. Nu. 10. de Aur. argent. legat. affirmis*, ane Mansie to be als meikle land, as may be gudly tilled be twa oxen in the zeir. *Cuiac. li. 1. de feud. writtis*, that *Mansus*, is sa meikle land, quhairby ane man may susteine honestly himseife and his familie, and pay the dewtie to his Maister, quhilk is called *Heredium*. Bot in the practique of this realme, it is rather called *Gleba*: That is, ane certaine porcion of arable lande. In Latine *Terra culta*, Or *terra, veluti nativi venditi cum gleba, h. e. terra. Qui nativi ascripti, vocantur. l. 2. c. pluribus. 14.* And the four aickers of Lande, quhilk is graunted to the Ministers of the Evangell, within this Land, is called ane gleebe, the quhilk shuld be free fra payment of ony teinds. *la. 6. p. 5. c. 62.*

*Heredium*  
*Gleba.*

And *Carolus Magnus*, to the effect that the Ministers of the word of God shuld not perish be hunger or povertie, gave to ilke Kirke ane manse. For the quhilk they shuld paye na dewtie or service. *Cuiac. Lib. 1. de Feud.*

*Manus Mortua, dimittere terras ad manus mortuam, hoc est, ad multitudinem sive universitatem, quæ nunquam moritur.* Quhilk utherwaies is called *Mortificare terras*: That is, to give and dispoñe lands, to the hande or power of the Kirke, College, Communitie, or ony Vniversitie, capable to possede, bruike, or joyes gudes or landes: The quhilk is said, per *antiphrasim* seu *à contrario sensu*. Because sik Kirks, Colleges, Communities, or Vniversities dois nocht die: albeit the particular members thereof ar mortall, alters, and deceasis. *Ius Normand. Lib. 5. c. 7.* Quhilk is conforme to *L. Proponatur. 76. ff. de iudicijs.* Swa *Manus* may signifie power, as in the Latine tongue. Or *Manus mortua*, may bee conforme to the Scottish word, borrowed fra the Dutch word *Meinzie*, quhilk signifies ane multitude, & speciallic of folke and people. And swa *dimittere terras ad manus mortuam*, is to give Landes to ony Vniversitie, and multitude of people. Alwaies it is not leasum to ony man to mortifie ony parte of his landes to the Kirk, without consent of the King. *Lib. 2. c. Notandum. 26.* Because the King may bee thereby prejudged in his tennendrie, dewtie and service, fra the quhilk the Kirkmen in auld time were excoemed.

Meinzie.

Dram.

*Mark, In tractatu de ponderibus & mensuris,* signifies aucht ounce weicht, or half ane pound, quhair of the dram is the aucht part. Like as the ounce is the aucht part of ane marke. *Chessa. in Consuetud. Burgund. Rub. 1. Sect. 7. Verb. 65. solz Turnois: solidus, inquit, in iure capitur pro aureo, quorum. 72. faciunt libram auri. Et duodecim uncia faciunt Libram, & octo uncia marcam. Gl. & Ia. Fabr. in Sect. nos autem. Verb. sol. dos. instit. de util. minor.*

Solidus.  
Libra.

*Marcheta*, King *Edward* did wickedly ordaine, that the Lorde or Maister of the ground, or Land, shuld have the first

first nicht of ilk married woman within the samin. The quhilk ordinance, was after abrogate be King *Malcolme the Third*; quha ordained, that the Bride-groome suld have the use of his awne wife. And therfore suld paye ane peece of money, called *Marca*. *Hector Boetius, Lib. 3. c. 12.* For the quhilk, certaine Kye was used to be payed. *lib. 4. cap. Sciendum 63.* Bot utherwaies in my opinion, *Marke*, or *Marche*, signifies ane horse. In the auld French, Irish, and Dutch tongues. For in the French tongue, *Marcher*, is to ride or gang; as *Marcher Devant*, to ride or gange before. And *Paulus Diaconus Histor. Longobard* writtis, that *Mar* is called in Latine, *Equus*, quhilk wee call ane Meare. *Alciatus de singulari certamine. c. 32.* *Marcam*, inquit, *Germani equam dicunt, unde Marcomanni (qui hodie dicuntur Moravi) equitatu pollentes populi. Et Maroboduus Rex Marcomannorum, cui corpus instar equi erat.* *Mar*-over, I finde ane aulde constitution, written be *Lotharius Imperator*, & *Carolus Rex*, in this manner: *Vi missi nostri, in illorum missatijs (h.e. commissarij nostri in ijs locis ad quos mittuntur) curam habeant, ne homines nostri, aut alij quilibet, vicinos suos majores, vel minores, tempore aestatis, quando ad herbam suos caballos mittunt; vel tempore Hyemis, quando Marefcalli illos ad fodrum dirigunt, d. praedantur, aut opprimant.* Be the quhilk it is manifest, that *Fodrum*, *fodrum* is a Dutch word, *pro pabulo equorum*, quhilke wee *Marchalcus*, call fodder, and *marshalcus* or *marefcallus*, is a maister of stable, or a servand that hes cure of the Horse; for *March* signifies ane Horse, and *Schalk* in Dutche, is ane servande, as *Godschalke*, the servant of God. And *Alciatus. de. c. 32.* Affirmis that the troupes of Horse-men, in the armie of *Brennus*, was called *Trimarchisia*, because ilke man had three horse. And in the samin signification, wee use the word, Horse marshel. Quhair horse is adjoyned, for interpretation of the worde *Marche*. As likewaies in *Silver-downe hill*: This word *Hill*, is the interpretation of the uthor worde *Downe*, quhair of the anc and uther signifies *anc*

## De verborum significatione.

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Mar.

Fodrum.

Marchalcus.

March

Schalke

Trimarchisia

Horsemarschal

Downe.

ane thing, in Latine, *Mons*. Swa hors-marschel, is ane fervand that keips or curis horse, as is commonly used within this realme. Quhilk opinion, findry Germane writers confirmis, and specially the *Scholiasfes* of *Gunttherus*. lib. 8. *Austriados*. Swa leavand to ilke man his awin opinion and judgement free to himselfe: I thinke that *Marchettamulieris*, is the raide of the woman, or the first carnall copulation and conjunction with her, quhilk in respect of her virginitie, is maist esteemed be men. Quhilk interpretation is confirmed als wa be *Cuiac*. lib. c. defend.

*Maritagium Heredis* The mariage of ane aire maill or femail, quhilk is modified & liquidat be the Lordes of the Session, to ane certaine summe of money, after consideration of the rentall, and valure of the landes pertaining to the aire: quhilke is either legall, or conventionall. The mariage Legall, is that quhilk be the disposition of the Law, perteinis to the superiour and Over-lord: For the marriage of ane aire maill or femail, of landes halden be service of warde and relieve, being of lesse age, or being of perfite age, & not married the time of the decease of his father, or uther predecessor, to quhom he is aire, perteinis to his immediat superiour, be the common disposition of the Law of this Realme. And gif there be maa superiours, the mariage perteinis to the first, and eldest superiour, to quhom the predecessors of the said aire, maid first leageance and homage: or of quhom they have the first interment of their lands. *leg. forest. c. si aliqui* 75. Mairover gif an aire haldis certain lands be service of ward of the King immediately: and certaine uther lands be the like manner of halding immediately of an uther superior, Spiritual or Temporal, the mariage of the aire shold perteine to the King allanerly, without any respect of the quantity of the lands, or of the priority or posterity of the halding: Because the King, hes not ane peere or companion, far les ane superior within his realme. *lib. 2. c. Restituere*.

The mariage  
pertainis to  
the eldest su-  
perior.

The mariage  
pertainis to  
the King.

44. c. 45. *Maritagium conventionale*, is that quihlke cumis not be disposition of the Law, bot be the convention and consent of parties, as quhen ony man haldis his lands in blench, or in fewferme: His awin, or his aires mariage, na waies thereby pertainis to his superiour: Bot zit gif he payis ony duty for his lands, *nomine alba firma*, or *nomine feudi-firma*, *uno cum maritagio habedis cum contigeris*: Gif he happenis to decease, the mariage of his aire, not being married, pertainis to his superior, not be the nature of the halding of his lands, bot be the convention and provision contained in his investment. The availe of ane aires mariage, is either single or double. For gif the superiour requiris not ane aire to marie, and the aire marie without his consent: The si perieur suld obtaine allanerlie for his mariage, be the estimation of the ordinar Judge, sa meikle as may be ane competent summe, or tocher to the said aire, conforme to his zeirly rente: Or gif the aire refusis to marie, hee cannot be compelled to do the samin: *Quia matrimonia debent esse libera*: Bot quhen he commis to persite age, hee sal give to his superior, als meikle as hee might have fra ony uther person, for the same mariage, before hee receive his Lands out of the hands of his superior, *Quia maritagium eius qui infra aetatem est, de mero jure pertinet ad dominum feudi leg. Forest. c. Si quis 66*. The double availe of the mariage of ane aire, pertainis to the superiour, quha makis ane lauchfull offer of ane party, to the aire in marriage. Providing that the partie offred, be of equal parage. For gif the superiour dois marie the aire, with ony person in d'sparage, as with ane burgesse man, or with ane villaine: gif the aire be of the age of 14. zeires, or mair, & gives his consent to the said mariage, the samin is gud and variable of the law. Bot gif the aire be within the age of fourteene zeires, quhair throw he may nocht give ane lauchfull consent to his mariage. In that case, gif his kinsman compleinis, the Over lorde fall tme and omit the ward, and all commodity that he may have thereby, untill the aire bee of lauchtull age of twenty ane zeires: Quhilk salbe converted and employed, be the sight of his friends, to his use and commoditie, be reason of the schame and dishonour done to him. *Leg. Forest. c. Si qui domini 65*. Quhilk is conforme to the lawes of England. *Hen. 3. stat. Merton. c. 6. c. 7*. Swa gif the mariage of ony aire, or heretrix, be fallen in the superiours hands, and the aire beand lauchfully required be the superiour, or his donatar, or

Single and  
double  
availe of  
marriage.

be ony cled with their richt, to marie ony agreeable partie without disparage offered to him, refusis to do the same, & maries ony uther person, without the licence and consent of the superiour or his donatar; Hee aucht & suld be reason of his contempt & disobedience, paye not onelie the single availe of his mariage; bot also the double thereof: That is, als meikle againe, as the single, be the modification of the Judge, after the zeirly rental, availe, and quantity of the lands & livings, perteing to the aire. And mair-over, in this case, be the auld law of this Realme, it is leasum to the superiour, to hald and retaine the lands, albeit the aire be of twenty anc zeires of age, untill he be compleirly satisfied of the said doub'e availe. *Leg. Forest. c. de heredibus. 64.* And it is to wit, that the said requisition suld be maid in this maner. The superiour his donatar, or the assignay maid & constitute be the Donatar, or ony vther person, havand richt thereto, aucht & suld be himselse, or be his lavchfull procuratour, havand special power in writ, to that effect, offer to the aire, personally apprehended, then being of lauchfull age for marriage, ane agreeable partie, expreemand the said persones name, & sur-name, without disparage to him; Sick-like beand of lauchfull age, and convenient for mariage, & require the said aire to solemnizate, & compleit the band of matrimonic, in face of halie Kirk, with the person that is offered. And for compleiting thereof, assigne and affixe ane lauchfull daye: To wit, the space of threttie dayes at the least to him to compleit the samin within ony Kirk appoynted be the maker of the offer to that effect. And in the meane time of the said requisition, or after the samin, the donatar, or ony uther assignay, havand richt & title of him or of the superiour (for the superiour himselse, needis not to make ony intimation of his richt and title, he beand no ourly knawin to be superiour) suld make be himselse, or be his procuratour, intimation of the richt & disposition maid to him, & schaw the same, and make the same patent, in presence of the said aire, & cause the samin to be read before him, or give or offer him ane copie thereof: To the effect that he thereafter may not pretend nor alleage ignorance there anent. And thereafter the said person, viz. The superiour, or ony uther cled with his richt, be quhom, or in quhais name the said requisition and intimation was maid, aucht and suld personally, or be his procuratour, compeirat the day, and Kirke appointed of before: Bring and with him the said partie offered, in proper person, reddie and willing to marie,

The forme  
how ane  
aire suld  
bee requi-  
red to  
marie,

rie, qua was offered in mariage : And there in lauchfull time before twelve houres of the day, offer him redly to accomplish and fulfill that quhilke he offered, and required to be done of before. And to that effect, there remaine quhill the Sermon, or diuine service be done, or quhil an houre after noone. And gif the aire compeiris nocht, or compeiris and refusis to marie, he sulde take instrumentes thereupon, in the hands ofane sufficient Notar, of the refuse maid be the aire, or of his non compearance : and the offer of the agreeable partie, togidder with the intimation foresaid, quhilke cannot be proven be witnesse, bot be writ. *Pen. Feb. 1567.* The Laird of *Dumlangrig*, contrair *Marion Carrutheris*. 21. *Iuny. 1568.* *William*, Lord *Forbesse*, contrait the Laird of *Boyne*. 4. *Iuny 1575.* The Lairde of *Glenbervie*, contrair the Laird of *Vany*.

*Maritagium*, Tocher gud. *Lib. 2. c. dos autem 19. in fine. c. potest. 21. cum seqq. vid. Dos.*

*Marius*, Ane officiar, or executour of summondess. *Iam. 1. parlia. 9. cap. 111. parla. 13. c. 140. Vide Recordum.* He is utherswaies called, *Præo regis Lib. 1. cap. cum autem. 8.* Quhair it is said, *Quod die dominico vox præconis effare debet*, because na summondess suld be execute upon ane Sunday. The Kings Maire is ofane greater power and authoritie, nor the messengers or officiars of armes, and especially in Iustice aires, and punishing of trespassors. Bot now the said office is given in fee and heritage to Maires of fee, quha knawis nocht their office : Bot ar idle persons and onely dois diligence in taking up of their fees, from them to quhom they doe na gud, nor service to the King.

*Matertera*, properly is the Mother side, *Quasi Mater altera.* Bot sum-times improperly it is taken for the Father sister, in Latine *Amita*. For *lib. 2. c. Deficientibus 34. Post Avunculum. h. e. patrui, ejusque liberos, Matertera ejusque liberi habent jus successionis.* And be the Law of this Realme, the bairnes descendand of the mother-sister, hes na richt of succession : Quhilke in the awin place and degree, is competent to the bairnes borne of the Father sister ; quhilke is manifest. *De judicib. c. heredum. 113. c. Item Nota 115. Vbi expresse, Matertera dicitur esse Amia. Vid. Avunculum.*

*Melletum*, Meddletum. *lib. 1. c. 2.* Ane French word, *Melle*, diffension, strife, debate, as we saye, that ane hes melled or tui- zied with ane vther. And in the actes of Parliament, and practi-



que of this Realme, *Chaud-mella*, is ane fault or trespassse, quhilk is committed be ane hoate suddainty, and not of set purpose, or *præcogitata malitia*. Ia. 1. 1. Mar. c. 51. And in *Libro M. Wilhelmii Skemai fratris mei*, *Commissarij Sanctia Andre. Fol. 121.* It is written, that *Flycht-vyt*, is liberty to hald courts, and take up the unlaw *pro mellitis*. Because *Flycht*, is called flyting; In French, *melle*, quhilk sometimes is conjoyned with hand-straikes. And in summe buikes *Placitum de mellitis*, is called the Mute, or pley of beating or whicking. lib. 1. c. 2.

*Menetum*, leg. *Forest. c. 2.* Ane stock-horne. In the quhilk place, it is wrangeously written *Cornuare minutim*, *pro cornuare menetum*, to blaw ane stock-horne, quhilk commonly is maid of Timmer and wood, or tree, with circles and girds of the same, quhilk is zet used in the Hie-landes and Iles of this Realme; quhair of I have seene the like in the cuntre of *Helvetia*, in the zeir of God, 1568. amongst the *Zuitzers*.

*Meremium*, *Muremium*, The timmer of ane house. lib. 4. 2. Si quis 55. In the English laws, *Carta de Foresta*. It is called *maremium*. And ane charter given be *Iacobus Senescallus Scotia* (King James the First, before his Fathers decease) To *Thomas Browster*, of the landes of *Sacerland*, beside *Passay*, nowe perteing heretabily, to *Matthew Steward of Barscube*, containis *potestatem incidendi meremium*: that is, licence and power to cutte ia meikle greene wodde in the Kingis Forest of *Rise*, as suld be necessar to the said *Thomas*, to bigge houses to his awne use.

*Mese* Of herring, containis five hundreth: For the common use of numeration and telling of herring, be reason of their great multitude, is used be thousands: And therefore ane *Mese* comprehendis five hundreth, quhilk is the halfe of ane thousand. From the Greek word *μεσον* in Latine *medium*.

*Messuagium*, lib. 2. c. Dos autem 19. c. Si quis plures 30. cum seqq. ane principall dwelling place, or house within ane Barronrie, quhilke in the Lawes of England, is called *Mannour*, ane Hall, Place, or Courteludge, or *Mannour house*. Albeit *Valentine Leigh*, in his buik of surveying of lands, affirmis *messuagium* to be the tenement or lands arable. And the dwelling house or place, or Courte-hall thereof, to be called *Sit*, from the Latine *Situs*: quhilk we call the seate, or on-sette. And it is not leasum to give the principall messuage, to the wife within burgh, in life-rent. Leg. *Burg. c. Null. Ins. 107.*

Manor.

Sit Sitys.

Milites,



*Milites, Leg. Mal. Mak. c. 2.* And generally, in the auld Lawes of this Realm, are called free-holders, haldand their lands of Barronnes in chiefe; quha hes na power to hald courts of life and lim: bot onely of injuries, wrang, and unlaw. Bot *militare* *Servitium* *servitium*, Knichtes service, is that manner of halding of lands, *militare*. quhilk is called, service of ward and relieve. *Et miles opponitur Soccomanno*, and he quha haldis his landes, *Per militare servitium*. lib. 2. c. Si quis 30.

*Misericordia*, ane merciment, amerciament or unlaw. *Leg. Forest. c. 5. de iudic. c. 40. Misericordia domini regis*, or the Kingis merciment in purpresture. *Lib. 2. c. vid. Foris factum dicitur. 75. vid. Amerciamentum.*

*Mote, Mute, pley, action, quarrell.* Quhen King *Malcom* the 2. gave all his lands to the Barronnes of this Realme: hee reteined to himselfe *montem placiti de Scona*, The mute-hill of *Scone*, quhair he might hald his bourts and do justice to his subiectes, in deciding their pleyes, and controversies. *Leg. Mal. Mak. inprin.* Mute in the lawes of this realme is called *Placitum*. And like as in the civil law, actions ar divided in civill and criminal: Swa *placitorum, aliud est civile, aliud criminale*. Playes ar civil or criminal: Civill ar called *actiones* of iniuries, wrang, and unlaw, *leg. Mal. Mak. c. 2.* And concernis pecuniall paines, or lands and heretage. Criminall pleyes, touchis life or lim, or capitall paines, called *pœna sanguinis. lib. 1. c. 2. c. 3.* *Placitum.*

*Mort-gage, mortuum vadum, dicitur pignus, cujus fructus, vel redditus percepti, in nullo se acquietant.* It is ane French worde, signifies ane dead wed; sick as ane certaine summe of silver, given upon lands in wed-set, and under reversion: quhilk is called ane dead-wed: Because be the auld law of this Realme, the profit thereof, that is, the annuall of the silver, is rekened as ane parte of the stocke and principall summe: And therefore the said stock is dead, without ony profite, as ane barren and dead tree, quhilk producis na fruit, *lib. 3. c. 4. c. 6.* Contrair the common forme of alienation of lands, under reversion, daily used within this Realme, called *pactum de retro-vendendo*, quhair be the annuel is zeirly payed, untill the redemption of the lands. At the quhilk time, the principall summe suld be likewaies compleitly payed. And swa baith the annuell, and the stock being payed, the profits are not rekened in the stocke, bot ilke ane of them are severally rekened, and severally payed, sa meikle for the profite,

## De verborum significatione.

and sa meikle for the principall summe. *Vide vadium.*

*Mulieratus Filius*, is ane lauchfull sonne, gotten with ane lauchfull wife. *Lib. 2. c. Si autem 22. Ex legitima muliere seu uxore, quia mulieris appellatione uxor continetur. L. Mulieris. 13. ibi Gl. de verb. signif.*

*Murthrums*, *Lib. 1. c. 2. lib. 4. c. 7.* Quhair of sum is called private, that is, mans slauchter, quhair of the author is unknowin; quhair of the inquisition perteinis to the Crowner; As quhen ane person is found slaine, or drowned, in ony place or water. Vther is publick, committed be forethocht-fellonie, *Quia non debet murthrum adjudicari, ubi infortunium intervenit: sed locum habeat murthrum, in interfectis per feloniam.* And swa murther is committed be fore-thocht-felonie, and not be suddaintie, *Chaud-mella*, or *infortunium*: That is, be chaunce or fortune. *Leg. Mal. Mak. cap. 2.* And in the laws of England. *Anno. 1. 3. Edw. 2. c. 1.* Murther is quhen ony man be ane propensed malice, lysis in waite to slay ane uther. And according to his malicious intent slayis him. *Molinaus in styl. Cur. Parl. part. 1. c. 13.* Conforme to the law of Normandy, *lib. 12. c. 1.* Affirmis, that murther is different from simple slauchter: Because murther is committed wittingly and willingly, be ane quha of set purpose lysis quietly in awaite for that effect. And slauchter is committed without ony fore-thought-felony, upon ane haistie suddainty, quhilk in Latine is *Rixa*: And in French, *Chaud-mella*, in the quhilk place he writtis, that three crimes perteinis to the high Justice: Wilfull-fire, ravishing of weemen, and murther. Bot be the law of this Realme, foure crimes are called the four poyntes of the Crowne: Wilfull-fire, ravishing of weemen, murther, and roberie or riefte: becaus the Iurisdiction, or cognition thereof, perteinis allanerly to the King, and to na subiect Spirituall nor Temporall, except the samin be specially granted to him be the King. *lib. 1. c. 2. leg. Mal. Mak. c. 4. lib. 4. c. Dei luna. 13. ass. reg. Da. c. 1.*

*Rixa.*

Pleyes of  
the Crown

N.

**N**AMARE, *Namios capere*, to take ane poynd, or ane distresse. It is ane auld Saxon word. For *Naman*, in Latine *Pignorari sive pignus auferre*. And *Namatio*, signifies the taking of

of ane poind. *leg. Brittonum. verb. Pignorari.* In the Law of Normandy, *Nami*, commonly signifies ony gudes or geare moveable or unmoveable, taken for execution of ane decreet, *Pignora capta, & bona capta pignori. ut in L. à Divo Pio. 15. ff. de rejudic.* Be the Lawes of this Realme, na poynd suld be taken, bot for ane confessed or proven debt. And the samin suld be publickly schawin, and maid manifest to all passengers be the way, and to all parties following the samin. *lib. 4. c. Si quis namos 30. cum seqq.* Na man may poynde within ane uther mann's boundes or iurisdiction, bot for debt auchtand to him, except the Kings Baillie be present. The poynd or distresse, suld be oonforme to the quantity and valure of the debt. Na person may be poynded, bot the debtor, or his sovertie or plegde. The poynd suld remaine within the samin Barronnie, quhair it is taken, in ane place perteing to him, quha takis the samin, or at the least, in the nixt adiacent barronnie, within the samin Schireffedome, and nor in Fortalices or Castelles. *Stat. 2. Rob. Br. c. Item ordinatum 8. Curia de namo vetito.* That is, of deforcement, be the auld Law perteinis to the King allanerly. *de Maritag. c. Sciendum. 17.*

\* *Nativi*, Borne slaves or servandes, *vide Bondagium.*

*None-entres*, Is quhen ane vassall, vest and saised in the fee and propertie of the Landes deceasis, leavand behind him ane aire, quha beand of lauchfull age, may enter to the lands, be taking of saising thereof, and zit enters nocht. In the quhilk case, the Landes are in the handes & power of the immediate superiour, be reason of none-entresse, *Propter negligentiam heredis, jus suum non prosequentis. Stat. Rob. 3. cap. Nota. 21.* Mair-over, there is twa kinde of *None-entresse*: The ane simple, nocht followand after ane warde, in the quhilk, the superiour of the Landes, untill they be declared be decreete of ane Ordinar Judge, to be in *None-entresse*, suld have allanerlie the retoured maill thereof, conforme to the newe extent. And after the declaratour, the superiour may remooove the tennentes, or occupie the landes as he pleasis, induring the time of the *None-entresse*. The uther kinde of *None-entresse*, is that quhilk followis after ane warde: As quhen lands aralden be service of warde and relieve; and the aire is *Minor*, and may nocht enter: The samin Landes perteinis to the superiour, be reason of ward, and nocht of *None-entresse*. For quhair there is warde, there is na *None-entresse*, be reason the warde, so lang as it induris, stoppis the *None-entresse*,

Bot

Bot quhen the warde expyris, togidder with the twa tearmes of the relieve; The none-entresse beginnis, gif the aire beand of perfite age, enteris nocht to the Landes, and obtainis saiking thereof. The quhilke None-entresse, requiris na declaratour, bot is of the like nature, with the ward preceidand. And induring the time thereof, the zeirlic mailles and dewties of the Landes, as they give be tacke and assedation, perteinis to the superiour; or he may remooove the tennentes and possessours therefra, and occupie the samin as he pleases: like as he micht doe in the time of the warde. Mair-over, this kind of None-entresse, beand given and disposed be the King, or uther superiour, to the appearing aire himselfe, or to any uther person, is sufficient and valuable to the donatar, for all zeires and termes preceeding the gift and disposition, and three tearmes after the perfite age of the aire attaneilie. And endis and ceasis after the ischue and out-running of the saidis three tearmes. And gif the aire enters nocht within the said space: It is leasum to the King, or uther superiour, to dispone of new the saide none-entresse to quhom he pleasis, to be used be him, unto the entrie of the lauchfull aire; as was decerned and ordained be the Lordes and Auditouies of the Checker, in the Moneth of Julii. 1596. And conforme thereto, decided be the Lordes of the Section. 9. Julii. 1597. The Laird of *Capringtoun*, contrair the Laird of *Hessilhead*, quhilk is not disconforme to the Lawes of the fewes, quhairbe the aire of the vassall, not desirand investiture. or possession fra his superiour, within zeir and daye, after the decease of the vassall his predecessour, tinis and foresatis his few, and the samin perteinis to his superiour. *Sett. 1. Et ibi. Gl. quo temp. miles investitur, petere debent. lib. 1. de feud.*

*Nova Dissasina*, recent spuilzie or eiection. *vid. Dissasina.*

0.

**OCHIERN**, *Ogetharinus*, Is ane name of dignitie, and of ane free-halder. *Stat. Alex. c. recordatio 26.* and appeiris to be of equall honour and preheminence with the sonne or daughter of ane *Thane*, quha baith, hes the like *marcbeta viz.* twa Kids, or twelve pennies. *Lib. 4. c. sciendum 63.* And likewise the *Cro* of ane *Thane*, and of ane *Ochiern* is foure *Kye*. *Lib.*

4. c.

4. c. statuit. 64. And unlaw quhilk the King may take fra ane Thane, is fixe Kye, and from ane Oshiern, fiftene Scheip, or fixe schillings. *Ass. reg. Da. c. recordatio. 17.*

ORA, ane auld Saxon word, and signifies mettall, fix as brasse or golde: And mairover, in ald times it was ane peece of cunzied silver or gold. For *tres ora aurea*, are the prise of ane Cowe. *Lib. 4. c. sciendum 63.* From this comes the word zit commonly used, *Vre*, as leid *Ore*: And in the Garviach, with in the Schireffedome of *Aberdene*, there is one hill called *Downyndure, monticulus metalli*: and the scheep there pastured, has their teeth couloured with zeallowe coullour, quhilk is ane taken of abundance of mettall.

ORIGELLVM *quasi anrigellum*, ane Habergion, made of mailzies, quhair of the edges are of mailzies of zellow coulour, resemand the coulour of gold or brasse. *Stat. 2. Rob. Br. c. ordinatum 27.* quhair it is called *Habergellum. vid. Hambert.*

*Out-fang-thiefe, vid. In-fang-thiefe.*

## P.

PANNAGIVM *Porcorum*, ane French word, signifies the duty of quhilk is given to the King, for the pastorage of Swine in his Forrefts, *Leg. Forest. c. 5. 6. 8.* As is manifest in the lawes of England, in the Chartour of Forrefts, quhair *Pannage* is called ane certaine summe of silver, quhilk the awner of ane Parke, or of some great wooded, quhair in their is greate store and abundance of Maste, Aike, Beitch, or vther trees, vsis to take of his tennents, or vthers for their Swine, that fall feede there, betuixt Michael mas and Martine. mes. Item, pannagium signifies ane pair of the kings demaine, or propertie, given to his second, or vther zounger sonne, or cousin, quhair of Chappinus writes, *de domanio regis Francia.* But hereof no mention is maid in the lawes of this realme.

*Particata. Velparticata terre.* From the French word *perche*, meikle vsed in the English lawes; ane ruid of land. *Leg. burg. 1. 1. 1. particata 140. stat. Will. c. perticata 13. Quon attach. c. de brevibus 31.* It is of verity, that three beare cornes without tayles, set togidder iulength, makis ane inche. Of the quhilk cornes, ane suld be taken off the mid, rig, and off the side of the



Rod  
Raip  
Fall lineal  
and super-  
ficiall.

Landimers  
Agrimen-  
tores.

Length  
and bredth  
of the fall.

rig, and ane off the furrow. Twelue inches makis ane sute of measure: Three sute and ane inche, makis ane Elne: Sex elnes lang, makis ane Fall: quhilk is the common lineall measure and mette. And sexe elnes lang, and sex elnes broad, makis ane squair and superficiall fall of measured land, and it is to be vnderstand; that ane rod, ane raip, ane lineall fall of measure, are all ane, and signifies ane thing; for ilk ane of them containis sex elnes in length, albeit, ane rod is ane staffe, or gade of tymmer, quhairwith land is measured, in Latine, *persea*. Ane raip is maid of towe, sik as hennep, or vther stufte, and sa meikle lande, as in measuring falles vnder the rod; or raip, in length is called ane fall of measure, or ane lineall fall, because it is the measure of the line, and length allanerly. Like as the superficiall fall is the measure, baith of the length and the bredth, *Quia linea est mensura solius longitudinis, superficies vero est mensura longitudinis & latitudinis*. Item, ten falles in length, and foure in bredth makis ane ruid: four ruid makis ane aiker. And swa ane discreet and true man, may measur ilk aiker of land, lang or schort with rod or raip, be the measure of the fall: Swa that he keepe iust count and gud remembrance, that the endes of the rod or raip be richtly and euene layde, without fraude or guyle. But it is necessar, that the measurers of land, called Landimers, in Latine, *Agrimensores*, obserue and keepe ane iuste relation, betuixt the length and the bredth of the measures, quhilk they vse in measuring of Landes, quhair- anent I finde na mention in the Lawes and Register of this Realme; albeit ane ordinance there- anent be maid be king *Edward* the first, king of England, the 33. zeir of his reigne: and because the knowledge of this matter is very necessare, in measuring of Landes, dayly vsed in this realme: I thought gud to propone certaine questiones, to *John Naper*, teare of *Merchistoun*, ane Gentle- man of singular iudgement and learning, specially in Mathematicque sciences. The tenour quhairof, and his answers mad thereto followis.

First, be quhat rule fall we vnderstand the length and bredth of the fall? It is answered: There is twa sortes of falles; the ane lineall, the vther superficiall: The lineall fall, is ane met- wand, rod, or raip, of sex elnes lang, quhairbe, length and bredth are feuerally met. Ane superficiall fall of Lande, is sa meikle boundes of landes, as squairly containis ane lineall fall of bredth, and ane lineall fall of length, quhairof followis, that be the lineall fall,



fall, lande is measured: and be the superficial fall, land is reckned. Now quhair it is inquired be quhat rule the length and bredth of ane fall fall be vnderstande. I aunswere, That quhen so euer the elnes of bredth being multiplied be the elnes of length, do produce 36. elnes the number product, is ane superficial fall: and the saide bredth and length, are the iuste bredth and length that makis ane fall. Swa threttie sex elnes lang, of ane elne brode, are ane fall of land. Item, aughteene elnes lang, twa elnes broade are the like: Als wa, twelue elnes lang, or three elnes broad, or nine elnes lang, of four elnes broad ar the fall. Lastly, sex elnes alwaies, that is to saye, sex elnes lang, and sex elnes broad, maks ane fal. To this fall, the little ruid; or ruid of warke, or of buirds, or of maison, or sklait warke, is equall, quhilk is maist properly the ruid, as after followis. Secondly, how many kindes of ruids ar in vs? *Answer*: Twa, quhair of the an is proper, the vther improper. The ruid properly, is an superficial fall, and conteinis 36 sex square elnes: Ane square elne, being the bounds of ane elne in breadth, and ane elne in length squarely included. The vther vulgare and improper ruid of land, conteinis fourrie of thir former ruides, or superficial fallis, and is the quarter of ane Aiker of Lande, because foure of thir ruides makis ane aiker, as said is.

Thridly, be quhat rule may the iust measure of ane aiker in length and breadth be vnderstand? It is answered. Multiply be Arithmetick multiplication, the number of the fallis that are in the length of the land, be the number of the fallis that ar in the bredth thereof: Every aucht-score fallis of the number produced, and resulting of the said multiplication, is ane aiker: and therefore aucht-score fallis of length, and ane fall of bredth, makis ane aiker: and four-score fallis of length, and twa fallis of bredth, makis ane aiker. Item, fourty fallis of length, and four fallis in bredth makis ane aiker. Als wa, twentie fallis in length, and aucht fallis in bredth, makis ane aiker. Lastly, ten fallis in bredth, and sextene fallis in length makis ane aiker.

Length &  
bredth of  
ane aiker

Fourthly, seeing there is ane kind of mesuring of land be rod and raip: quhat is the forme therof? And gif there be ony ma forms, how are they called? and quhat is the forme and maner of the samin? It is answered: There be knawin too experthe Mathematicians, mony and diverse waies to mette lande, all

The maner  
of mesu-  
ring of  
landes be  
rod or  
raip.

agree and togidder in ane, but of the vulgar people there is but ane forme of metting vsed and vnderstand: to wit, be rod and raip, that is to say, be ane rod or gade of sex elnes lang: Or be ane string or coard, of sex elnes lang, steated betuixt twa staues. The cord being ane schaft length abone the pykes, or nether endes of the staues. The said rod or raip, or either of them, is called ane fall: to wit, the lineall fall foresaid. With these fall is, ilke square peece of land, is met over the middis, quhat fallis and elnes it hes of length, and thereafter is met croce. ouer the middis, quhat fallis and elnes it hes of bredth. Therafter the fallis and elnes of the length on the ane part, and the fallis and elnes of the bredth, on the vther parte, are multiplyed togidder, and the product schawis the number of the aikers, ruides elnes. quhilk the said peece of land conteinis. As for example, gif the peece of land be 51. fal, three elnes of length, and 10. fallis, 2. elnes of bredth: multiply 51. fallis, 3. elnes, or 51. fallis to be 10 fallis, 2. elnis, or to be 10. fallis: The product wil amount to 532. fallis, or 532. fallis, 6. elnes: quhair of euery acht score fallis ar ane aiker. Swa 532. fallis 6. elnes, are three aikers and ane quarter, 12. fallis, and 6. elnis of met-land.

**PATRIA**, *Affisa, vel recognitio per affisam*; Ane assise or inqueste of cuntrie-men, quhilk is called *recognitio patria*. *Lib. 3. cap. cum autem. 6. vid. Bonapatria.*

**PEDELLVS**, *Leg. Burg. c. citatio. 109.* The Serjand or Beddle of the burgh, quha suld execute summondes: make attachments, or take poindes. *Quon. attach. c. nullus 57.* Quhair of they hauena power, without their awin iurisdiction. *Affreg. David. c. nullus 14. Dicitur autem pedellus a pedo. hoc est, baculo*, because all sik serjandes suld vse ane wand, staffe, or halbert. *Iam. 1. p. 6. c. 99.*

**PED E-pulverosus**, ane French word, *ped. puldrenu*, dustie fute, or an vagabound, speciallie ane merchand or creamer, quha hes na certain dwelling place, quhair the dust may be dicht fra his feete or schone, *De Maritag. c. si quis 9. leg. Burg. c. si burgensis 41. de iudic. c. 47.* To quhom iustice suld be summarly ministred within three flowinges and ebbings of the sea. Ane pedder, is called an marchand, or creamer, quha bearis ane pack or creame vpon his back, quha are called beirares of the puddill be the *Scottesmen* of the realme of polonia, quhair of I saw ane great,

great multitude in the Towne of Crasowia. anno. Dom. 1569.

**PENSION**, ane dewtie, sik as ane annuel-rent: For that quhilk in the act of Parliament. lam. 2. p. 11. cap. 41. Is called the pension of *Cadzow*: In the Checker. rolles is called the annuel rent of *Gadzow*. And siklike in the saimen place mention is maid of the pension of the ferme meill of *Kirk patrik*, quhilk conteinis fiue chalder of ait-meill, quhilk the Abbot and convent of *paislay* payis zeirly forth of the Kirk of *Kirk-patrik*, to the king, as ane pairt of his annexed propertie, as is manifest in the Schireffe rolles of the Checker of King Ia. 3. 1487. In *libris feudorum*, *Soldata* is ane zeirly free gift and donation, induring the life time of the giuer, and is swa called, *a solido, quia plerumque in solidorum donatione consistit* Sect. 1. *quis dicatur marchia. lib. 5. de feud.*

Pension of  
Cadzow.  
Pension of  
Kirk Path.

Soldata

**PLACITVM**, From the French word, *plaiders* Pleyes of the Crowne, pley, contention, strife, or debate. *placitare, significat litigare et causas agere. Molinaus in stil. suprem. cur. Par. part. 1. c. 6. part. 2. c. 3 Et D. Smith. lib. 2. 6. 10.* of the common weill of England. *Vid Mote placita corone*, pleyes, or criminall actiones pertaining to the Kingis Crowne and iurisdiction allanerlie, or to his Iustice generall, quhilkis are foure in number: Robberie, or rief: Rauishing or deforceing of weemen; Murder, and wilfull fire, sik as burning of houses wilfullie, and malitiousslie. *vid Murthrum*. Quhair of, or of onie ane of them, gif ony happenis to be convict, all his gudes pertainis to the king allanerly, in the samin maner, as is statute of the gudes of, traytours. *Leg. Mal Mak, cap. 3.*

Pleyes of  
the  
Crowne.

**PLEGIVS**, ane pledge, borch, or eautioner, *dimitere terras ad plegium*, To let landes, to borch, is quhen ony controversie, being for the possession of landes, the samin after inquisition and tryall taken there anent, given and committed to the last lauchfull possessour of the samin landes, vnder borch and caution, that he fall restore the samin to him, puha fall be found to haue richt therto. Ia. 2. p. 14. c. 26. Or quhen twa persones contendis be way of deede and armes, for the possession of one landes: The superiour therof may recognosce, or take to himselfe the possession of the landes, vntil it be tryed quha was last lauchfull possessour therof: And then let the landes to him to borch, and vnder caution, as, said is. *Stat. Rob. 3. c. Nota. 21. Cer-*

taine cornes growand vpon debatable landes, betuixt the L. *Ruthven*, & the L. of *Copemalindie*, be decreete of the Lords, ar lartin to borch to the said Lard, he findand caution that the samin salbe furth-cummand to them, quha recoveris the samin be law, without preiudice of the richt of onie of the parties their anent in time cumming. And like as the Over-lord, or iudg for the causes foresaid, lettis landes to borch, to the possessour therof, the tennent or possessour, *petit terras dimitti ad plegium*, desires the landes to be letten to him to borch, or under caution, *Stat. Rob. 3. c. 4.*

**PORTEOVS**, portuis. Ia. 1. p. 13. c. 139. Ia. 2. p. 14. c. 99. Ia. 5. p. 3. c. 5. *A portando*, quhiik signifies to carie, or beare: In French *portes vous*, and signifies ane catalogue, conte-nand the names of the persones indited to the iustice air, quhiik is given and delivered be the iustice clerke to the Crouner, to be attached and arreistid be him, to compeir and answer to sik ac-cusations and crimes, as salbe impute unto them, & the porteous containis the names of them quha ar of new indited, and the names of them quha were indited of auld and of before, and com-peired not: And quhen ony iustice aire is cried or proclaimed, commandis given be the iustice to warne al persons, as weil in-dited of auld, as of new, to compeir in the said aire, to underly the law. The crouner receivis the porteous, as said is, and caries the samin with him, vntill the attachments and arreistments be maid, conform therto, and reportes the samin againe to the Iust-ice court: That therby he may be controlled in execution of his office, sa far as concernes the making of attachments and arreist-ments or probation theirow.

**POSTNATIVS filius**, ane second sonne, narrest to the first begotten, conforme to the French word, *le puis aisné lib. 2. c. si ergo. 23. c. praterea. 25. c. maritus. 32. l'aisné*, is the first borne sonne, and therefore *le puis aisné* is *post primogenitum*, the second sonne.

**PRISAE**, ane French word *prisas*, in Latine, *captiones*, sik as ane poynd, distres, or moveable guds, taken for execution of ane decreit: for be the laws of France, *Prisa sunt rerum mobili-um. salsina vero immobilium, quia bona immobilia non capiuntur, sed saisuntur. Rebuffus in constitut. Reg. in tract. de liter. obli. art. 5. gl. 2. & de preconum licitationibus ar. 1. gl. 2.* Quhaira-ment I finde ane ordinance maid, *de modo capiendi prisas*, be King

David

David. 2. 18. Feb. 1269. the 40. zeir of his reigne. *Prise seu cap-  
tiones domini regis, persolventur & capientur secundu consuetu-  
dines antiquitus approbatas, & de terris illis de quibus prise regis,  
& servitia debent sumi, & quodinys faciendis non fiet taxatio  
juxta numerum davatarum, sed secundum verum valorem bo-  
norum.*

**PROPORCITAS**, *proportatio assisa*, the proport, report,  
declaration, or deliverance of ane assise. *Stat. Alex. c. stat. dom.*  
5. *Quon. attach. c. si quis appellet. 53. assisa reg. Da. c. 9. c. stat. 30. c.*  
*stat. dom.* 38. Vtherwise it is called, *veredictum assisa*, the vere-  
dict or futh-saying of ane assise. Because assisoures ar sworne to  
declare the truth and veritie, and therefore ar called *Iuratores*.  
Like as the assise is called *Iurata patria, sive vicineta, lib. 1. c. dici-*  
*tur. 74.* And in the English lawes, ane Iurie.

**PVRPRESTVRE**, *Purprison*, ane French word, for ane Three  
wrangeous usurpation, taking, or occupation of an uther mans kinde of  
lands, quhair of there is 3 kinds. *lib. 2. c. dicitur. 74. de judic. c. pur-* purpursion,  
*prestura. c. 138.* The first is, quhen any man occupies vnjustlie ony  
pairte of the Kings domaine, & proper lands. Or quhen ony stop-  
pis or closis up the Kingis common way, passage or street. Or re-  
turnis or divertis rinnand waters fra their richt course; Or within  
the Kingis Towne & Burgh, occupies the Kingis Callay, or com-  
moun gate, biggand vppon onie pairt thereof: Or remoue and  
onie thing there-fra: Or converting onie pairt theirot to his  
awin vse. And generallic, quhen onie wrangeous occupation is  
maid to the hurt and skaith of the Kingis tennente, the Kingis  
streete, or commoun way: Or of the Kingis Burgh. The qu-  
hilk kinde of *Purpresture*, suld be decided before the Kings ju-  
stice and his deputes, be ane condigne assise. And he quha  
is convict theirot, salbe in the Kings mercie, and punished con-  
forme to his will in his body, and in all his landes quhilk he halds  
of him: and mair-over sall restore that quhilk he unjustlie big-  
ged and occupied. The second kinde is, quhen ony vassall occu-  
pies and usurpes ony lands against his over lorde, vther then the  
King. Quhilk controversie may be decided be the over-lord in  
his awin court, and gif the vassall is convict to have done wrang,  
be tynis perpetually all the landes quhilk he halds of that supe-  
riour. The quhilk jurisdiction and power of halding of courts of  
*Purprison*, perteinis to ane Barron, and to vthers, quha ar abone  
him in power and dignity; sik as Earles and Lordes. For na  
vassall,



vassall, subject, nor vther tennent vnder ane Barron, hes power to hald sik courtes. *Iam.* 1.p. 16. c. 79. The thrid kinde of *purpresture*, is against ony vther except the king and the superiour: As betuixt nichtbour and nichtbour, subject and subject: quhen ane wrangeously occupies the lande perteinng to ane vther, or troublis him in his meithes and marches: quhilk molestation perteinis to the Schrieffe, to be tryed before him, be ane brieue, *de nova dissafina*, or *de rationalibus divisis*. Be the law of England. *An. Edward. 1. de begamis. c. 4.* gif ony vsurpis and occupies within the Kingis liberty, or ony vther place, contrair the King: Incontinent without proces of ordour of law, the King tuik the land in his awin hand, and thereafter it was leifum to ony person, havand entres to compleine thereanent: the lik forme is permitted be the lawes of this Realme, anent the Kingis customes. *Ia. 1. p. 1. c. 8.* And his annexed propertie. *Ia. 2. p. 11. c. 41.*

PVTAGIVM, ane French word, huiredome or fornication. *Lib. 2. c. in custodis. 9. c. ult. 53.* Quhair it is manifest, that ane aire femaill, being within waird, and of lesse age, and committing fornication, tynis and foresaults hir pairt of heritage, and the samin accrescis, and perteinis to the rest of the co heires, or comportioners, gif ony be. And gif there be ane heretrix alanely quha commits the said fault; all and hail her heritage perteinis to the superiour. But gif ane heretrix of landes, hes bairnes lauchfully gotten in mariage: and after the decease of her husbnde, in the time of her viduitie, committis fornication: neither sche nor her bairnes, tynis the heritage. *Quia putagium matris non adimit hereditatem*: The huiredome committed be the mother, dois not disherish the lauchfull bairnes.

## 2.

QVARENTENA *viduarum*, in the statutes *Rob. 3. c. de viduis. 22.* From the French, *la quaresme des vesnes*, signifies the priviledge of fourty dayes granted to widdowes, after the decease of their husbndes, conforme to the Lawes of England. *Anno. 20. Hen. 3. c. 1.* Quhair it is statute anent Widdowes quha after the death of their husbndes, may nocht have the dowries of the landes, quhair in their husbndes died vest and raised: and shall happen the saidis Widdowes to recover the samin thereafter



thereafter be play or processe : they quha troubled and molested them, being convict of sik wrangeous deforcement, sail zeild and pay the damnages and skaith, to the samin Widdowes. That is to say, the value of the haill dowrie belanging to them, from the time of the death of their husbandes, unto the day that the saidis Widdows obteneis decreet in judgment. And the said deforcers neverthelesse salbe americiat, at the Kingis pleasure. In the quhilk place it is plaine, that *Quarentena viduarum*, conteinis the space of fourty daies : during the quhilk space, ane Widdow may tarrie and remaine in the chiefe dwelling place of her husband, vntill her dowrie be assigned to her, and in the meane time suld be susteined vpon the profites of the heritage. And it is likewise written in *Magna charta*, anno. 9 Hen. 3. c. 7. quhilk is conforme to the Lawes of France, as writis *Iohn Papou* in his arreistes. lib. 15. Tit. des dots. c. 7. & lib. 10. tit. substitutions. c. 30. per authenticam praterea. C. unde vir & uxor. And in the borrow-lawes of this Realme, the second, or third wife of ony Burges, after the decease of her husband, may not remaine in the house perteing to his aire gotten of ane vther wife, bot onely fourty daies. *Leg. burg. c. si burgenfis duas* 25.

**QVHATECVS**, ane kind or forme of bread, quhilk wee call ane fage, or phage, from the Greeke word *φαγο*, comedo to eate.

## R.

**RACHETVM**, ane French word, *Rachapt*, ane ransom. In sum buikes it is called *Rachatum*, *transpositis literis*. Stat 1. Rob. Br. cap. 1. Stat 2. Rob. Bru. c. 7. Quhair it is called theift bote : and in sum auld buikes *Rachetum*. *Rachetum est thifibute vel redemptio capta pro venditione furum, latronum vel aliorum male-factorum* : that is, theift bote or redemption taken for thieues, robbers, or vther malefactours.

**RAPTVS**, rape, ravishing or deforceing of weemen, quhilk is ane of the foure pointes or playes perteing to the Kings Crowne, and to nane vthers. *vid. placitum vid. Murthrum*. Ravishing is ane crime, quhair of ane woman accusis ane man, alledgand she is oppressed or defiled be him, against the Kings.

peace, *Lib. 4. c. raptus 9.* The quhilk complaint suld be maid the same day and nicht, in the quhilk the crime is committed, *Quia lapsu diei hoc crimen prescribitur. Quo attach. c. de catero 48. Statuit. Willb. c. Item statuit.* In the lawes of England *Westm. 11. c. 14.* Rape is quhair ane man ravishis or takis ane vther mans wife, widdow, or maiden violently, and hes a do with her against her will. And albeit she afterward consent, zit it is fellonie, quhilk is confirmed be *Chess. in consuetud. Burgund. Rubric. 1. verb. Es droicts d' icellis Nis. 43.*

REIF, or robberie, is likewise ane of the four points of the Crowne. *Lib. 4. c. die luna 13. leg. Malc. Mak. c. 4. ass. reg. Da. c. 1.* Robberie is quhen ane man lysis be the Kings hie-waie, passing to mercat-towns; in woodds, ditches, or ony vther secrete place, quhair people cummis furth by, and robbis and spulzies them, albeit he take away bot the valour of ane pennie, or lesse, it is fellonie: For the mala-pertnesse of the deed, breaking of the Kingis peace, and the daunger in the quhilk ane man is of his life, causis the offense to be the greater, then gif the geare swa robbed or spulzied had bin thieftously stollen; as is written in the Lawes of England. *An. 23. Hen. 8. c. 1.* In the law of Normandie. *lib. 3. c. 1.* Robbery is the taking of vther mens geare be force and violence: And the committers theirow, in Lattine ar called *raptores*, in French *volcurs* or *Robewres*, and is different from theift quhilk is committed quietly and privately, without violence. Mair-over, rief is ane greater crime then theift, because rief is committed baith in the gudes, and in the person of the possessour theirow; and theift is of the gudes and geare allanerly, *Chess. in consuet. Burgund. rob. 1. sect. 5.* Be the law of this realm, the complaint of rief or robberie suld be maid be him quha is robbed, and damnified within the time, as is foresaid, of the ravishing of weemen. *Quon. attach. c. de catero 48. lib. 4. c. raptus 9.*

Difference  
betuix rief  
and theift.

RECOGNITION of landes is commonly vsed in the Law, and practique of this realme. *Sicut feudum dicitur aperi-ri domus: ita terra dicitur cadere in commissum: sicut fit in hoc casu ob culpam vassalli, & in Emphyteusi.* or few landes, ob non solum canonem, seu pensionem. *lib. 3. c. ex locato. 11.* For the vassall tynis landes halden be him be service of ward, be reason of his awin fault, as falbe hereafter expounded: and the proprietar of few lands, may tine and fore fault the samin, for none

none payment of zeirly duty, *Cognoscere*, is to know and vnderstand, *recognoscere* is to know againe, or at the second time to vnderstand: for generally, all superiors of quhom lands ar halden in chief, first hes bin proprietars of the samin lands: quhilk lands being annalied, and sauld be them heritably, to be halden of themselves and their aires, ceasis to be propertie to them, and becomes tennendry immediatly halden of them, and their aires. And gif it happenis the vassall or possessour, to quhom the lands ar sauld, to commit ane fault or crime, quhairby he tynis and forefaultis the lands: the superiour hes entresse and regresse to the property of the lands, and may recognosce the samin, and as it were the second time vindicate to himselfe the propertie thereof. Swa the samin lands, quhilks were first propertie to him, and thereafter tennendrie, be reason of the alienation, nowe becomes againe propertie, and returnis to their first nature and condition, *Iure accrescendi, seu potius consolidatione proprietatis cum superioritate, ob culpam vassalli*. Recognition properly in the practique of this Realme, is quhen ony vassall, or free tenant, haldand his lands be service of warde and relieve, sellis and annalies all and haill his landes with their pertinentes, or the maist part thereof, without licence, consent, or confirmation of his Over-lorde. In the quhilk case, all and baill his saidis landes, als well not annalied, as annalied, as said is, may be recognosced and resaised in the superious hands, and bath the propertie and possession theirow perteinis to him to be bruiked or disposed be him at his pleasure, quhair of diverse and findrie practiques ar extant in the Register in the dayes of K. James the fourth, of gud memorie. The superiour understanding the landes to be wrangeously annalied, as saide is; incontint thereafter may use the recognition thereof, and without processe or ordour of law, may take saisng of the samin, conforme to the auld practick of this Realme: because the samin alienation is done to his dishonour and contempt be his vassall, quha suld do reverence and service to him, and therefore without his consent suld not do ony thing to dissolue the league and band, quhilk is betuixt them. Mair over the vassall may not make the said alienation, because thereby he may become puir, and unable to do to his superiour sik service, as he suld do of the Law. *Cmra. Lib. 1. De feud.* And not understanding that the saisng is taken bee the superiour, zit the vassall or possessour tinis

The causes  
of recog-  
nition.

nor foresaltis na waies the proprietie of the saides landes, untill zeir and daie be out-run : Swa that he do diligence within fortie daies after the said recognition, and taking of the saising, to crave and aske fra his superiour the saides landes to him to borch, that is, to repledge them, find and pledge and caution, that he fall be reddie to do to his superiour, anente the saides landes, all that equity and lawe requiris, *Stat. Rob. 3. cap. 2.* This kinde of recognition is conforme to the Lawes of the Fewes. *Quia feudum amittitur, si fidelis libellario nomine, amplius medietate in feudum dederit aut pro pignore plus medietate obligaverit* Sect. 1. *quib. med. feudum amittatur.* & Sect. 1. *de alienatione feudi.* Et in jure Canonico. c. 2. & ibi gl. ex tr. de feudu. Porro libellarius contractus, dicitur venditio, qua fit scriptura interveniente, certo pretio & certa pensione constituta, in annos singulos, ut post Fendistas scribit Cuija. in d. Sect. 1. Recognition of Lands is some times generally taken monie waies. *Stat. Rob. 3. cap. nota quod iste. 21.* First, gif the vassall deceis, the superiour may recognosce & reteine all the landes halden of him un-aire, they be recovered fra him be the entresse of the righteous till and that be reason of non-entries.

2. After that the aire hes recovered the lands furth of the hands of his superiour : Neverthelesse the superiour may recognosce and reteine the samin, untill security be maid to him for payment of the relieve, *vid. relevium*

3. Gif the vassall is fugative for slauchter, and not law bidand, the superiour may recognosce the land halden of himsele, sa lang as the felon or man-slayer happenis to live. Conforme to the quhilk, be the actes of Parliament, the life-rent of the vassall, being zeir and daie at the horne, pertainis to the immediat, superiour, except he be rebell for treason, in the quhilk case, his life-rent, and all his lands, guds and gear moveable and immoveable, pertainis to the King allanerly. *Quia poena debet eidem applicari, adversus quem committitur culpa.* 4. Gif the vassall annalies his landes, or the maist pairt thereof without licence, consente, or confirmation of his Over lord : The overlord may recognosce the same, as said is. Bot in this case he is obliged to let the lands to borch, to his vassall ; askand and cravand the samin within the lauchfull space of fourty daies, after the recognition ; and saising taken untill it be tryed be the Iudge Ordiner, quhidder the cause of recognition be lauchfull

or not. Quhilk being found lauchfull, the Iudge suld counsell the King, and decerne ony uther superiour to hald his hands fra the Landes, and let them to borch to his vassall. And gif the cause be found just and reasonable; The Iudge suld decerne the propertie, and possession of all and hail the landes, to pertaine and remaine with the superiour.

5. Quhen twa or mair partes contendis be way of deede and armes for the possession of lands, the superior thereof, may recognosce & sequestrat the samin, untill it be tryed quhilk of them is lauchfull possessour: and thereafter let the landes to borch to him, quha is found to have best possession.

6. The superiour may recognosce and reteine lands halden of him in cheife, for service aucht to him, furth of the samin landes. Bot bee the practique of this Realme: the service aucht to be proven and liquidat, and thereafter the lands may be lauchfully comprised.

7. Lands halden in few-ferme, payand and ane certaine zeirly dewty, *nomine feudi-firma*, may be recognosced bee the superior, for none-payment of the few dewtie, and that twa maner of waies. The first, *ex provisione legis & natura contractus*. For the few-fermorer not pay and his few-ferme, for his ingratitude and unthankfulnessse, this and forefaltis his few-ferme, be the disposition of the Law, quhilk as zit, was not in practique and use within this Realme.

The second is, *ex provisione hominis, & cautionibus contractui insertis*, quhilk is called ane clause irritant, as quhen ane clause and provision is contained in the infestment, that if twa or mair termes run in ane non payment of the few-ferme due: then and that caise, the infestment of few-ferme to be *irritum*, null and of nane availe, quhilk is conforme to the daily practick of this Realme, *Quia pacta conventa legem contrahentibus prescribunt. vid. l. & Tit. c. de jure emphyteu.* Alwaies, be the act of Parliament made be 1a. 6. p. 15. C. 246. Alienations of lands made in few-ferme, are null for not-payment of the few dewties, be the space of twa zeires, albeit na paction or provision be maid there-aneut in the infestment.

RECORD VM, *Recordatio lib. 1. c. contingit. 31.* quhair-aneut I finde difficultie. Alwaies *recorda summonitionis*, signifies the rehearse, reporte, or testification of the execution of the summons, brieve, or uther precept. 1a. 1. p. 9. c. 112. quhilk execution, is now called *Indorsation*. Because commonly it is



written in *doyle*, and upon the backe of the summondes, *leg. Forest. c. 25*. And be the practik and daily consuetude of this realme zit observed, the execution of all briefes before inferior Iudges, and of all criminall summondes before the three Estaites in Parliament, or verified in judgement, be the record of the executor thereof, and twa witnessse at the least. And in auld times the serjands or maires, maid the record of the summondes, be word, or bee writ, as they pleased: and verified the samin, as said is. And untill the samin were done, the defender could not be compelled to make ane answer. *lib. 1. c. cum autem. 8. de judic. c. 30*. And King David the second, 18. Feb. 1369. and of his reigne the forty zeir, statute and ordained anent the record of serjands or maires, that the summondes and record theirot, fall be put in writ, gif it please the serjand or maire, and he shall reade the samin gif he can, in plaine court: Vtherwaies, he may make the record be word, in the best forme he may, and gif he failzie, he may be helped and supplied be interrogatours of the Iudge, concerning all and findrie clauses or artickles, necessarily used in the record of ane summondes, quhilk record the serjand or maire fall prive sufficiently be lauchfull witnessse. And the said record being swa maid, the samin fall be received as lauchfull, and the contrair partie fall not be heard to object against the same, or to propone any exception against the lauchfulnesse theirot. And it shall be leisum to the Schireffe, his depute, serjand, mair of fee or any uther depute serving in the office of ane serjand or mair, be the authoritie of the summondes of the record or indorlation thereof, swa that they be qualified, and abill to-do the samin. *1a. 1. p. 9. c. 112*.

ITEM, *recordum curia*, signifies the report, rcherfall, or minute of that quhilk is done court or the interloquoutour of the Court. *lib. 1. c. contingit. 31. Quon. attach. c. nullus sectator 20*. In the Normand law, *lib. 9. c. 31. via Sectator. vid. Verda*, quhilk in the auld times was nocht written in buiks, bôt inrolled togidder in paper. Like as the Kingis rolles are zit written in Parchment in the Checker. Therefore they are called the roulement of courte. As the Kingis rolles or *rotuly*, and the Clarke of Register *clericus Rotulorum*, in Latine properly *volumenta, quia involuntur, & in se quasi retorquentur*. And it is to wit, that actiones and pleyes, are either directly, and from the

Rol'ment  
Court.



the beginning perſewed in ane court : or they come fra an inferior court, to ane ſuperiour *per translationem. lib. 3. c. fraternita. 16.* quhilk now is called advocacion : As quhen ane pley or cauſe, is advocate from ane inferior Iudge, to ane ſuperiour : quhilk advocatioas are permitted and leaſum to be maid to the Kings court allanerlie, be the auld law of this realme, ſik as the Juſtice court or Schireffe court : and now be the praſtick uſed, and obſerved to the Lords of Seſſion, and College of Juſtice : And ſiwa becauſe he quha alleaged that wrang was done to him in the inferior court, raiſed the record, or interloquutor pronounced againſt him, and ſum-mound the Iudge to compeire before the Kings Juſtice, or Schieffe, to heare and ſee him decerned to have done wrang. Therefore *ſola curia domini Regis, dicitur habere recordum. b. c. Potestatem cognoscendi de recordis & interloquutorijs, qua tranſferuntur ab inferiore curia ad ſuperiorem.* Albeit ilk lauchfull court, ſik as ane Barrone courte, hes their awin recordes, and interloquoutoures ; in all ſik aſtions as ar intended and deſided before them, and nocht Advocate to ane ſuperiour Iudge.

REGRATERIS, *leg. burg. c. regratarij. 70.* Quha by is ony merchandice or uthar thing, and takis unleaſumlie greater price for the ſamin afterward, as is exponed be Ia. 2. p. 6. c. 23, 24. Ia. 6. p. 12. c. 148. In the civill law, regrateris are called *dardanarij, qui emunt, ut poſſint poſtea pluris vendere. l. an- nonam. 6. de ver. & extraord. crim. A quodam Dardano, qui annonam flagellabat. Alciat. lib. 4. de verborum ſignificatione.* And ſiwa regraters are ſo called be reaſon of the augmentation and hichting of the prices. Foreſtallers are properlie they quha pre-occupies and byes merchandice before it cum to the mercat, or to the ſtall, or place quhair it ſuld be ſavld, or the time of day ſtatute and ordained theirto. Ia. 5. p. 4. c. 20. And mair-over it is ſtatute that na man dwelland within burgh, or without the ſamin, ſall upon the Faire daie, bye ony thing out-with the portes of the burgh, *c. nullus. 75.* And likewise, na perſon ſuld bye fiſh, fleſh, victuall, or ony uthar thing before marcat day, or the ringing of the bell in the ſteipell. *Stat. gild. c. 29.* And mair-over foreſtallers are challenged & accuſed, becauſe they ſell their gudes, and payis not the Kingis cuſtome ; that they ſell their gudes privilie upon their awin ſluite, that they ar fore-byars of quheate, beare, aites, cattel, and ar cowperis and

and sellers their of, turnand the samin in merchandice. *leg. burg. c. de modo calum niandi foristallatores. 154.*

RELEVIVM, ane French word, from the Latine, *relevare*, quihilk is to relieve or take up that quihilk is fallen. For it is given be the rennent or vassall being of perfite age, after the expiring of the ward to his over-lorde, of quhom hee holds his lands be knicht service, that is, be ward and relieve, and be payment thereof he relievis, and as it were raisis up a-gaine his lands, after that they were fallen downe in his superiours hands, be reason of wairde. *Lib. 2. cap. dicitur autem. 72. Leg. Forst. cap. si quis Comes 73. de judic. 65.* And the profits of the Landes of the zeir, after the end of the wairde quihilk suld be given in name of relieve, are understand to be the retoured maill, of the saides landes, conforme to the new extent thereof. And therefore gif there be bot onelie wairde, and the aize enter before ane terme run thereafter, the King or uther superiour suled have na relieve, *Quia hered ad astatem perveniente, & facta ei hereditatis restitutione, quiescit a relevia, ratione custodia. lib. 2. cap. tandem. 70.* Be the Law and consuetude of this Realme, the superiour might nocht be compelled after the wairde, to restore the Landes to his vassall, untill he had beene first satisfied for the relieve: because he had libertie to reteine the Landes until the said satisfaction were made. *Stat. Rob. Bru. 3. cap. nota quod iste 21.* Or else it was leasum to him as he pleased, to poynd the ground therefore *Quia dominus potest distringere tenentes suos pro suo relevio, & servitio de fundo suo sibi debito. lib. 2. Sunt quidam 73.* Bot now by the common practique, the none-payment of the relieve, is na lauchfull excusation to the superiour, anent the receiving of his vassall. Bot he will be compelled be precepts of the Chancellarie, to receive his tennente, or else he tynis the superiortie, induring his life time. And it is leasum to him to poynde the grounde for payment of the relieve. *Quia relevium est debitum reale, & adheret fundo.* The beginning, and the first institution of the ward and relieve, was in the time of Malcolme the second, called Malcolme Maie Kenneth, Quha gave all and hail the Landes of this Realme to the inhabitants thereof, and reserved nathing to himselfe in propriety, bot onely his royall power, and the Mute Hill of Scone, quhaie be suld hald Courte, and receive homage and fealtie of his vassal-

*Curia* recompensation quhair of, all the Barrones gave unto him the waired and relieve of the aire of ilke barrone, for his princely sustentation. In the English Lawes, reade in *Magna Carta. Anno 9. Hen. 3. cap. 2.* And the statute of wardes and relieves, made be King Edward the first. 18. zeir of his reigne.

*Replegiare*, to replege, that is, quhen ony man, be vertue of his awin jurisdiction, bringis backe-againe, or reducis to his awin court his awin man, fra ony uther mannis court, and leavis ane plege or cautioner behinde him, for administration of Iustice. *vid. Culrach.* It is not leasum to ony man to replege fra ony uther court ony person, bot his awin liege man, or halding land of him, or remainand in his service, as ane of his familie or consanguinitie. *Stat. Alex. c. Anno 4. Stat. 2. Rob. Bru. c. 11. Ass. reg. David. c. Statuit. 37.*

*Rescantisa*, *Lib. 1. c. Effoniorum. 10.* Ane sicknesse and infirmity, quhairby ony man is heavely vexed. *Effonim de Rescantisa, id. nalet quod excusatio, de malo lecti*, Bedde-evil. *Cum quis morbo ita affligitur, ut sit lecto affixus* in French, *Mal. de Lit. stat. Rob. Br. c. 5.* In the Law of Normandy. *Lib. 9. c. 10.* *Effoinzie* or excusation of *Mal rescant*, is quhen ony person lyand bed-fast in his awin house, or ony uther place, is heavely vexed with sickness, that may not travell without danger of his life. *In jure civili morbus fonticus dicitur, qui cujusque rei agenda, impedimento est, veluti febris: Et legitimam excusationem ac dilationem prabet. L. Quasitum 60. ff. de re Indic. Aulus Gellius Lib. 20. c. 1. Appellat Morbum fonticum, quemlibet morbum vehementiorem, vim graviter nocendi habentem.*

Effonim  
umim.  
Rescantisa

Morbus  
fonticus.

*Responde*, or the buike of *Responde. Ia. 8. p. 11. c. 73.* It is maide and writen be the directour of the Chancellarie: For quhen he directis precepts to the Schireffe or utheris, to give saisng of ony landes retoured before him to the Chancellarie: He makis ane memoriall of the daite of ilke precept and dewtie of the landes, with the manuer of halding: And commandis the Scheriffe to take securitie for the samin, during the time of the ward, and none-entresse, and of the relieve aucht and to the King, gif the landes be halden be service of ward and relieve: Or of the doubling of the few-ferme, or of the blanch-ferme, according to the halding of the landes. Quhilk

buik zeirly is presented to the checker : And ilke Schireffe, and uther Iudges, givers of faifings upon precepts, direct furth of the Chancellarie, as charged therewith in their compts, compelled to make answer thereunto, and payment of all summes contained therein: for the quhilk cause, it is called *Responde*, quhilk is the first word of ilk article of the said buik. Further in the end of the saidis precepts, it is said, *presentibus post proximum terminum minime valen- ris*. And therefore, gif the obtainer of the precept furth of the Chancellarie, lye out and take not faifing upon the samin, quhill ane terme and maa be by run, after the dait thereof, he shuld come againe to the Chancellarie, and rayse ane new precept, quhairin is augimented the byrun mail'es of the landes, sen the dait of the first precept, and ane new memoriall or *Responde*, is maid their of.

*Retour*, quhom be it is maid, and quhy it is sa called, *vid. brevie. de morte antecessoris*.

*Regres*, from *Regredienda*, like as

*Reversion*, a *Revertendo*. For like as the byar of lands, lettis them returne to the seller thereof, be the reversion given unto him. Even swa, be the regresse the superior of lands wed- set be his vassall, after the redemption thereof, suffers the first seller of the samin to come backe againe to his awin place, anent the halding of them, as hee did before the said alienati- on. Swa reversion and regresse are different: For reuersion is given be him quha byis the land, *Cum pacto de retro venden- do*, to the annalier thereof. In French it is called, *Insreachep- tus* or *reachep*. And ane regresse is given be the superiour of landes, to the annalier thereof, quhairby he promisis to receive againe him, or his aires to be his vassalles, as they were of be- fore, quhen it shal happen ony of them to redeeme the saidis Lands. 27. November. 1565. George Halyburnson, contrair the Laird of Hation. And gif ony man annalies landes under reversion, to be halden of him and his aires, ane regresse is not necessar. For they being afterward redeemed, he quha first annalied them, recovers the property thereof, without ony new faifing, and the same returns to him, and is con- solidat, with the superioritie quhilk he reserved to him and his aires, the time of the alienation. Bot gif ane man annalies landes to ane uther, under reversion to be halden of the superi-  
our,

out, and the byar thereof obtaine infefument, and faifing hal-  
den of him: The annalier thereby is denuded of the proper-  
tie, and alſwa is na langer vaſſall to his former ſuperior, and  
can na waies recover his former eſtair, bot be redemption of  
the lands, conforme to the reverſion granted be him quha  
bought them. And alſwa be ane regreſſe, given to him be the  
ſuperiour: In the quhilke caſe it is neceſſare to him, quha firſt  
annalied the landes, and thereafter redeemed them to tacke  
new faifing, to the effect the propertie quhilke was firſt anna-  
lied may returne to the ſeller. And that he may halde the ſa-  
min landes in chiefe of his ſuperiour, and his aires, as he did  
before the alienation. And it is generallie to be obſerved, that  
quhaire ane regreſſe is required, ane new ſalfine is neceſſare.  
In auld times, the reverſion was continued in the chartour,  
as is manifeſt be diverſe Chartoures, zit extant in the register,  
given in the time of King David the ſecond: containe the  
tenour of the reverſion after the claufe, *Tenen & haben.* and  
uthers auld chartours in the forme after following.

OMNIBVS hoc ſcriptum viſuris vel audituris I. dominus.  
de A. Salutem in domino. Noveritis me conceſſiſſe, im pignoraſſe,  
& ad immobile vadium dimiſſiſſe, & hoc praſenti ſcripto meo  
conſirmaſſe, nobile viro V. de F. Omnes terras meas de A. cum  
pertinentijs, in baronia de C. infra vicecomitatum de B. pro vi-  
ginti Marcis vſualis moneta Scotia, mihi per praedictum V.  
tempore confeſſionis praſentium, ad opus meum valde neceſſa-  
rium, gratanter mutuatis, & in uſus meos converſis. Tenen.  
& haben. praſato V. heredibus ſuis & aſſignatis, a me, here-  
dibus meis & aſſignatis in feodo & hereditate, cum omnibus  
commoditatibus, libertatibus, & aſſamentis ac juſtis pertinentijs  
quibuſcunque adeo liberè, & quietè, plenariè, & honorificè, benè,  
& in pace: ſicut ego vel praedeceſſores mei, praſatas cum perti-  
nentijs, liberùs aut quietius tenui, aut poſſedi, tenuerunt, aut  
poſſeſſerunt, aliquo tempore praterito. Et ſemper quomſque ego pra-  
dictus I. heredes mei, vel mei aſſignati viginti marcas praſate  
monetae, praedicto V. heredibus ſuis vel ſuis aſſignatis, in uno die,  
inter ſolis ortù & occaſu ejusdè, Abirdene in Eccleſia parochiali  
ejusdè; ſuper magnum altare, ſimul & ſemel, perſolvero, vel  
perſoluerint ſine fraude. Fructibus, firmis, vel quibuſcunque alijs  
commoditatibus ſeu emolumentis medio tempore per praedictum,  
V. heredes ſui vel aſſignatos, perceptis vel percipiendis, leua-

## De verborum significatione.

tis vel levandis, indicta summa viginti marcarum, aut ejus solutione, nullatenus computandis. Quia dedi, concessi, & assignavi prefato V. heredibus suis, & assignatis, omnes prefatas firmas, fructus, & alias commoditates quasunque, & emolumenta de dictis terris cum pertinentijs, provenien. toto tempore, quo predicta viginti Marca (ut pramittitur) non fuerint persoluta: ex mea libera donatione, & pura voluntate, pro suis consilijs, auxilijs & gratitudinibus, multipliciter mihi factis & impensis. In quibus quidem terris cum pertinen. prefato V. tradidi satisfam, & possessionem corporalem sibi, heredibus suis, & assignatis, juxta tenorem presentis scripti, remansuram. Ego vero predictus I. heredes mei & assignati, totas terras predictas de Acum pertinent. prefato V. heredibus suis & assignatis, juxta vim, tenorem & effectum presentis scripti in omnibus & per omnia, contra omnes mortales varrantizabimus, acquietabimus, & defendemus. In cuius rei testimonium huic presenti scripto meo, sigillam sigillum apposui, & propter maiorem rei evidentiam, meum Andrea Giffard, tunc aldermanni. de Abirdene, presentibus apponi procuravi. Apud Abirdene 23. Augusti anno Domini. 1419. Testibus Laurentio de Abernethy, Domino de Rothemay, Domino Wilhelmo de Lundoris vicario de Abirkerdonr, cum multis alijs ad premissa specialiter vocatis. Bot now the Chartour is given be the seller of the lands, and the reversion be the byar thereof, severally sealed and subscribed be them, and the byer keepis the Chartour, and the annalier keepes the reversion, as their proper evidentes, quhilke forme appeares to have the beginning in the dayes of King Iumes the Thrid, quha in the acts of Parliament. p. 5. 20. Novemb. c. 27. callis the bying and selling of landes, be chartour and saifing, and taking againe of reversions, ane new invention: and for the mair securitie, ordainis all reverfiones to be registered. *vid. Sterlingus. vid. Vadium.*

S.

**S**CACCARIVM, the Checker, in French *Eschequier*, the place quhair the Kingis rents and patrimonie, alsweill propertie, as casualties, is inbrocht, compted and received, and the profites of all lands fallen in the Kingis handes be reason of wardc. *Lib. 2. c. Si vero dominus* 46. Some callis it the



the soveraigne and supream court; in the quhilk all causis and actions ar decided in the second instance, speciallic in the cuntrie of Normandy : For it is writen in the Law of Normandie. *Lib. 15. c. 1. in fine*, That *Philippus Pulcher*, did institute twa Parliaments in Paris, and twa Checkers in Roan. *Paulus AEmilius* writtes, *Scaccarium* to be as it were, *Statarium*, quod homines ibi in iure sistantur, vel quod sit *Stataria* & perennis curia, cum cetera curie essent indictiva, nec loco, nec tempore stat. As writis *Buleus* in *Annotationibus in Pandectas*. Be reason as said is, the Checker was ane certaine stable-court, and nocht deambulatour, or runnand fra time to time, or fra ane place to ane vther : as the Session of this Realme was before King *James* the Fifth. *Qui instituit Statariam curiam, cum antea esset indictiva* : Be reason it did sit thrife in the zeire, quhair and quhen it pleased the King. Vthers thinkis that *Scaccarium* is so called, a similitudine ludi *Scacchorum* : That is, the play of the Chessle : because mony persones convenis in the Checker to pley their causes, contrare vthers, as gif they were sechtand in ane arrayed battell, quhilk is the forme and ordour of the said playe *lus Normand*. *Lib. 15. c. 1. in fine*. Vthers alleagis, that is cummis fra ane auld Saxon word, *Scata*, as writis *D. Thomas Smith*, quhilk signifies treasure, taxation, or impost, quhair of, and of vther casualities, compt and reckoning is maid in the Checker. Quhilk compte, (like as all vther comptes) is maid in sik sorte and forme, that *tabula accepti*, that is, the charge : And *tabula expensi*, that is, the discharge, ar equall, and sic aque, because the comptar hes given furth na mair, nor he hes received : and als wa hes given als meikle furth as he hes received. Quhilk is called *pariare rationes*, and this comptar is called *Pariator*. *l. ult. sect. idem quasi de cond. et. in deb. l. p. nult. sect. conductore de iure immunitat*. Or else the charge and discharge are inequall in sik maner, that the comptar hes received mair nor he hes expended, and sa at the fute of the compt, he is found restrand a wand certaine sums up-taken be him, and not given furth, quhilk is *reliquare rationes*, and this comptar is called *reliquator*, and is oblied *reliqua inferre* to pay the rest auchtand be him, *l. creditor 102. sect. Valerius de solutionibus*. Or thridly, *tabula expensi* superant *tabulas accepti*; quhen the comptar hes given furth more nor he hes received

ceived, and swa is super expended, quhilk is called *supererogare*, i.e. *supererogare, vel superare rationes seu tabulas accepti*. And the comptur quha makis sik ane compt, is called *supererogator*, Quhilk word is used in the Evangel of S. Luk. c. 10. 35. quhair the *Samaritanæ* have and piety and compassion vpon the man, quha betuixt *Ierusalem* and *Iericho* was spuilzied, and wounded be thieues and robbers, did commit him to be cured be the host of his ludging, and gawe him twa pennies, and promised to recompense quhatsumever he spendid mai. *vid. Ballivus.*

**SACERBORGH**, or rather *Sickerborgh*, *securus plegius*, ane sicker sure, sufficient cautioner. *Quo. attach. in prin. la. 2. p. 14. c. 75.* Is ane manner of borgh or caution, quhilk ane findis to ane vther, and speciallie in actiones, or pleyes: for quhen onie man hes action to ane vther for theift or slaughter, quhairof he offeres to accuse him iudiciallie: It behuiffes the persewar, to knit and oblisch him, in the handes of ane officiar, or before ane iudge competent: and finde sure caution, and sicker borgh, that he fall persew in forme of Law. *Mod. ten. cur. c. 44. lib. 4. c. 1. Stat. Alex. c. 9. c. si quis conquest 10.* In the civil law, the accuser in criminall causes *cogitura scribere nomen. l. 3. ff. de accusat.* And conforme to the practik and law of this Realme, the persewer quhen he raifis the Letters, findes Caution to reporte the samin againe, dewlie execute and indorsat. And also to persew at ane certaine day, conforme to the tenour of the letters. And more-over, quhen he accuses ane vther criminallie, before the iustice and his deputies, he suld sweare the dittay to betrew, quhairvpon he accusis the defender: bot the Kingis advocat accusand criminallie onie of the Kingis lieges, is na waies oblischid to sweare in this case.

**SAK**, *Lib. 1. c. 3.* In sum auld buikes it is called *placitum et emendade transgressionem hominum in curia nostra*. In the Britton lawes of King Edward, it is written, *Sachæ est si quilibet aliquem nominatim de aliquo calumniatus fuerit, & ille negaverit, forisfactura probationis vel negationis (se venerit) fuerit.* Quhilk may be called the vnlaw or amerciament payed be him quha denies that thing quhilk is proven against him to be trew, or affirmis that thing quhairof the contrair is of veritie.

SAISINA, ane French word, saising or possession, *vid. Dissasina.*

SCHAFFA, *sagittarum*, ane scheife of arrowes, conteining xxliij. Vtherwaies called *garba*. Ane scheife of Iron, contains sextene gades, ane scheife of steile contains fourtene gades. *leg. naviium.* or schip lawes. c. 2.

SCHIREFFE, ane principall ru'er or judge of ane certaine part of the Realme. In Latine, *præses provincia.* Aluredus in the confederation made with *Gumherus* king of Denmarke, divided England in *Satrapias, centurias, & decurias*, and called *Satrapian* ane Schire, that is, ane cutting off section, as is written in the auld Briton lawes, *verb. centuria*: like as we say as zit, scheir cornes; or scheir grasse, or ony paire of schieres, quhair with claith is cutted. And swa ane schyre or Schireffedome, is ane parte of lande, cutted and separate be certaine Meithes and Marches from the reste, within the quhilk the Schireffe as judge, dois iustice, and pronounces decreetes and domes, to all the inhabitants theirow: For schyre is ane cutting or section, as said is: And dome signifies ane sentence, decret, or judgement; as demstar or domestlar, is he quha pronounces the dome or sentence in court: And *dies Iudicii* is the day of iudgment, or deomisdlay. It is also called *comitatus, provincia, vel vicecomitatus.* lib. 3. c. tali autem. 18. lib. 4. c. si quis 28. c. si quis in manibus. 42. Schireffes in this Realme hes their offices given to them be the King in heritage, contrair to the act of Parliament. Jam. 2. p. 11. c. 44. Quhilk is the cause of great enormities and wranges, be reason the Schireffes being infest heretabli, thinkes themselves sure of their office, and regardis nocht the execution theirow. And to the effect that gud men may mak conscience of their calling (quhair of they sall mak compt and rekonig to God, of all evill committed, and of all gud omitted) And that vthers may be instructed of their dewtie, and ather mooved to do the samin: or else be punished for neglecting theirow: I have collected and gathered furth of the lawes of this Realme, ane schort rehearfall and summe of all thinges pertaining to the office of ane Schireffe: and first of perlones, ilk as Schireffes, Deputes, Clerks, and Seriantes. Secondly, of Shireffe Courtes. Thirdly, of his office, and iurisdiction, quhilk generalie consistis in observation and execution of all the Kingis lawes:

lawes : and particularlie, in particular actiones and pleyes, pertaining to his jurisdiction and court : Quhair of sum are ciuill, vthers are criminall. And last, of the paines and punishment of malicious or negligent Schireffes.

Deputes  
& clerkes.

First, Schireffes suld be in all and sindrie partes throwout the hail realme and speciallie in the North partes and West partes of the samin, sik as the North Iles and South Iles, for the acquieting of the people be iustice: and in *Rosse* and *Caithness*. *Iam. 4. p. 6. c. 59. c. 61.* And to the effect they may the better exerce their office, and do iustice to every person, as effeiris, they suld be gud sufficient, and qualified men, as is statute be King David. 2.6. *Nov. 1357.* In ilk Schireffedome they suld doe iustice to the Kingis Lieges, hauld courts in lauchfull time, and continue the samin according to law, swa that Actiones and proceffe, begun and intended before them, fall na waies be delayed throw their negligence, fraud, or mallice *Sta. Rob. 3. ex libro Sconensi*, and suld do iustice and full law, als weil to puir as to rich, under all paine, and charge that may follow. *Ia. 1. p. 1. c. 45.* And briefly all schireffes and vther ordinar iudges, their deputes and clerkes, suld knaw and vnderstande the lawes of this realme, and actes of Parliamente, quhair of the execution is committed to their charge, quhilk they suld cause be execute without delay. *Ia. 6. p. 12. c. 124.* and suld not only be qualified in iudgement and knawledge, to minister iustice, bot also suld haue sufficiently of their awin, in landes, gudes and geare, quhairin they may be punished, being found culpable in execution of their office. *Ia. 1. p. 1. c. 6.*

The Shi-  
reffes fee.

The Schireffe suld haue for his fee of the escheittes, ten pundes. *Leg. Mal. Mak. c. 1.* Quhilk fee suld be payed to him of the extractes and escheittes, of his awin court, and na vther waies : but na fee suld be allowed to him, untill first he make compt to the Checker of his intromission. *Aff. reg. Da. ex lib. Sconensi.* And vnder pretence of his fee, he suld take nathing, nor use ony extortion vpon them, quha cummis to faires, Parliament, or generall Councelles. *Iam. 3. p. 5. c. 33.* Nor suld take na distresse of gudes and geare of little price and quantitie, cummand to the faires or mercattes : Alwaies he sulde haue the best oxe or cowe, or vnriden horse, quhilk is stalled or broucht to be sauld. *Ia. 2. p. 13. c. 60.*

Al Schireffes sal have gud and sufficient deutes, or bailles, for quhom they sal answer. And gif ony person be infest with sik office in auld time, and is unable, or un-apt to use and exerce the samin in his awin proper person: he sal present to the King, ane sufficient depute, to exerce the saide office in his place, for quhom he salbe answerable, as is statute be King *Da. 2. 6. Novem. 1357.* quhilk is confirmed be *Iam. 1. p. 1. c. 6.* And generallie it is trew, that ilk Schireffe and uther ordinar judge, sall be halden to answer for their deutes, as themselves *Id. 3. p. 5. c. 26.* And therefore all Schireffes and iudges, for their awin better security suld make their deutes, ane or maa, gud & wise substantiall men, of best fame, knowledge, understanding, and experience, and least suspect within the schirefdome, and suld cause them be swome the time of their admissioun, that they sall leillly & truely use ther office: and gif they continue them fra ane zeir to an uther: they shall cause them be zeirly sworn, for administration of justice at the head-court a fier *Michaelmes. Id. 5. p. 6. c. 73.*

Schireffes  
deutes &  
their quali-  
tie.

Schireffe Clerkes suld be honest famous men, quha be themselves and their sufficient deutes, sall be alwaies resident, within the head burgh of the Schire, for registration of letters of horning, and better execution of their office. *Id. 6. p. 6. c. 75.* Be the auld law of this Realme, the Schireffe clerk was input and out-put be the King: and had na league nor bande with the Schireffe, but was bound and oblished to the King allanerly, and was susteined in his highnesse house, as occasion & time required, and did all things concerning his office, with the counsell and advise of the King. *Afs. reg. Da. in lib. Sconensi.*

The Schireffe-Clerke receivis for his fee of ilk americiament or un-law, twa shillings. *Leg. Mal. Mac. c. 1.* gif he sal happen to be found culpable in execution of his office, and specially anent the registration of letters of horning: he suld be punished of all his gudes moveable, to be applyed to the Kings use, and the Schireffe sall pay for the fault of his Clerk, ane hundreth pounds to the King, and all damage and interesse of the party grieved. *Id. 6. p. 11. c. 71.*

Schireffos  
Clerkos.

Schireffes suld send their deutes and Clerkes, ane or maa zeirly, at the first day of *November*, to the Lords of the Session, to be examined and admittid be them, under sik paines, as the Lordes sall please to modifie, in case of failzie, to be employ-

Deutes &  
Clerkes.

employed to our Sovereigne Lordes use. *Tit. 8. p. 11. l. 80. Ia. 6. p. 12. c. 124.*

The Schireffs serjant, or officiar, shuld have ane horne, and ane reid wand of three quarters of ane yaird lang at the least, and gif he have not the samin, he shuld be challenged therefore be the Schireffe in his head courtes. *Yaird. p. 6. c. 99.* Quhair of the one add the uthir is necessar to him in the execution of his office, for with the soun or blast of the horne, he denounces the disobedient rebelles: And also persewis malefactours, quha ar fugitive fra the Law, and rayses the inhabitants of the Cuntre; no concour and assist in taking and apprehending of them. And with the wand, he relaxes them quha returnis to the Kingis obedience fra the horne, and receivis them to the Kingis peace, as I have said already in ane uthir place. Likewais, all Schireffes, Stewardest, & Baillies, sal cause the waxes, serisands and officers, have ane signet containand the first letter of their name, quhair with all letters and precepts extant be them, and indorations beirof, sal be marked and stampit. *Ia. 5. p. 6. c. 74.* The Schireffs serjant shuld have for his fee of ilk amerciament or unlaw of court, ane colpinlach, or threitis pecunia. *Reg. Malc. Mackeld. r. 1.*

Schireff  
Court.

It is lawfull and necessar to the Schireff and his deputies, to hold Schireffs courts, for execution of his office, quhilk courts ilk Schireff be the auld law of this realme, is obliged to hold at the space of ilk fourty daies. *Lib. 4. c. Saturnus. 19. Aff. reg. Da. c. 2. d. summonitions. 12.* And now all Schireffes, Stewardest, and Baillies shuld have thair head boures in the zen; be themselves in proper person: except they have just and lauchfull excuses of sickness, or of the Kings service. And all baronnes and free-halders quha awfull and presence in the saids courts, sall comper personally: And the absents shuld be enterisat, and all they quha aw bot suit allaneith, sal send their suitors, honest and qualified men, able to decide ony action or cause. And all they quha cummes to the court, sal remaine until the samin be ended. And shall passe upon inquestes and affises, and assist the Schireff doing their office and service, conforme to thair investments. *Ia. 5. p. 6. c. 73.* The Schireff in his court shal keipe and observe the forme and ordour of process, as is used before the Lordes of Councell and Session. And he shuld set his court peremptourly upon fiftene dayes,

gute and  
presenc.

and





The Schireffe suld cause the lawes be proclimed and observed.

The Schireffe suld be present in all courttes.

The Schireffe suld repaire to the King.

they fall faithfullie serve the King, within their awin Schireffedome, and sal not trouble or molest any person within the samin, against law and reason. *Aff. reg. Da. c. nullus* 13. *Quo attach. c. nullus* 57. Siva it is manifest that the Schireffe hes only jurisdiction, within his awin Schireffedome: Within the quhilk, he and his deputes suld cause the Lawes and actes of Parliament to be published, red, & proclaimed in his courts, and to be keiped and observed be our Sovereigne Lordes lieges, alsweill in the courtes of all Prelates, Earles, Barrones, and uthers havand power to hald court, as in his awin Schireffe court, and suld give to them the copie of the lawes, that na man pretend in thie ignorance thereof: *Stat. Rob. c. Robertus*, 28. And sik-like in all Burrowes of this Realme, the Schireffe fall cause twelve leill and honest men of the burgh, sweare and make faith, that they shall cause the Kings lawes be keiped and observed. *Stat. Alex. c. Item in omni* 25. And to the effect the samin may be the better done by him, the acts of Parliament being registrat, suld be delivered be the Clerk of the Register to him: quhilk he fall cause be proclimed openlie, in the chiefe place of the Schireffedome, & suld give copies of them to Prelates, Barrones, & Burrowes within his Schireffedom, baith to lande & to burgh, to keipe and observe the saides lawes and statutes, under the paine of deprivation of his office. *Iam. 1. p. 3. c. 67. Ia. 2. p. 14. c. 90.* And likewaites, to the effect the Schireffe suld see iustice lauchfullie done and ministred: he suld be present in all courttes of Bishops, Abbots, Earles, Barrones, and free-halders, to quhome it is not leasum to hald their courts, except the Schireffe or his deputes be presente, or summoned to that effect. *Lib. 4. c. die luna. 14. Stat. Alex. assisa. 10. Aff. reg. Dav. c. 1.* And sik-like, na Barron may hald court of bartell, water or iron, except the Schireffe or his deputes be present to see iustice done. *Stat. Alex. c. prater ea* 28. *vid. duellum. vid. mahamium.* And mair-over the Schireffe and all Iudges within the Schireffedome, suld repaire and come to the King, the first night he cummis within the Schireffedome, to answer to all complaints maid against him, anent the nocht-keiping and observation of the lawes, and fall not depart nor passe away licence asked and obteined, under the paine and uniaue of aucht Kye. *Aff. reg. Da. c. statumum* 20. *Quo attach. c. statumum* 80. and also fall

shall not passe away fra the King, except he have with him the acts of Parliament, and his instructions given to him in writ. *Ass. Reg. Da. ex libro Sconensi.* Last, concerning the execution and observation of the lawes, the Schireffe, nor na uther officer of the law, shall onie waies obey or execute onie command direct to them be the King, under the great scale, privie scale, or signet, repugnant or contrarious to law or reason. Bot gif onie sik precept be presented to them, they shall receive the samin reverently, write upon the back thercof, and remit the samin againe. *Rob. 2. 1372.* And of his reigne, the first zeire.

He suld not  
execute or  
obey un-  
lauchfull  
cumands

The Schireffe suld not onely make the publication of the lawes, and cause the samin to be keeped and observed: Bot also suld concur and assist with uthers to do the samin, sik as the iustice generall, chalmerslane, and auditors of our Sovereigne Lords Checker.

The Schireffe at command of the iustice generall, suld summond certaine persons to burgh and land, to give up dittay to the iustice Clerkes, and suld be present in proper persone at the iustice aire, with the verification of the saidis summondes: As suld susteine and paye the expenses of the iustice clerkes, in the time of the taking up of the dittay. Quhilk suld be allowed to him in his comptes, he suld (conforme to the iustice precept direct to him) summond all Bishops, Abbotes, Earles, Barrones, Free-holders and all uthers quha aucht presence in the iustice aire, and are immediate vassals to the King, so compeir in the iustice court, to fortifie and assist the iustice. Likewaies he suld summond all persons indyted of new and of auld, all pledges oblised for the entrie of onie man in the aire, all persones quha will persue or defend in the said court, to compeir, do, and fulfill that quilk accordis of the Law. He suld be present in the court, with sufficient testimonie of the execution of the said summondes: And suld make provision for the iustice and his Clerkes, quhilk suld be allowed to him in his first compt in the Checker. He suld take up sik summes of money, and gif neede beis poynd therefore, as the iustice modifies to be payed be them, quha ar amerced, or cumis in will. *vid. Iter.*

The Schi-  
reffes of-  
fice in the  
iustice aire

Mair-over, gif there be onie persones, quhom the Crowner

may nocht, nor dare nocht arrest: He sall deliver their names to the Schireffe, quha sall be becume borgh and cautioner to enter and presente them in the iustice aire. Or sall passe, or send sufficient number of men, to fortifie the crowner, making the arrestment, and bring the person arrested to the Schireffe to be kept be him. Quhilk gif the Schireffe failzie to do, he sall pay ten pund to the King. Ia. 3. par. 14. c. 99. Because the Schireffe suld keip the persones arrested be the Crowner, and enter them to the iustice aire, gif there be na Castell pertaining to the King within the Schireffedome, quhairin they may be kept. Ia. 5. p. 3. c. 5.

Moreover, the Schireffe or his deputies suld passe or send with the crowner and visie the gudes pertaining to all persones conuict in the iustice aire, and deliver to the Crowner sa meikle thereof, as he suld have be the law, and inbring the remanent to the Thesaurar. Ia. 3. p. 14. c. 102. And the last daye of the aire, the Schireffe suld thoillane assise anent the using and execution of his iustice. Iam. 3. p. 14. c. 102. Finallie, the Schireffe or his deputies be their Clerke, suld inbring to the Thesaurar, all extractes of the iustice aire, and summes of money contained there-intill: quhilk gif he failzie to doe, na allowance salbe granted to him in the Checker of his comptes albeit he have the Kingis letter in the contrair, granted to him in his favours. *Aff. reg. Da. ex libro Scenensf.*

Chalmer-  
laine aire.

Quhen the chalmerlaine is to hald his aire within ony burgh, the Schireffe be vertue of the Chalmerlaines precept direct to him, suld attach and arrest without delaie, vnder sure pledges and cautioners, all them quhais names the provest and baillies of the Burgh sall give to him in writ, to compeire before the chalmerlaine, or his deputies, day, place and time of the aire, to answer to sik thinges as sall belayd to their charge. At the quhilk court, and aire, the Schireffe and his deputies suld be present, bringand with them the saide precept and verification, or testimonie of the execution thereof. *Ier. camer. c. 2.*

Checker.

All Schireffes suld be examined zeirlic in ilk Checker, how they have kept the acts of Parliament, and how they have punished the transgressors thereof. For in the checker, the Schireffe, or ane of his deputies for him, havand sufficient power, suld compeir and fyndare there anent, in *animam ejus*:

Vnder

Vnder the paine of ten pund and finall of his office at the Kingis will. *Aff. reg. Da ex libro Scorensi.* In the quhill Checker, the Schireffe suld make compt and full payment, *aque* with the rolles, as far as he hes intronnetted, or might intronmet with the Kingis propertie or casualties, sik as escheites and wardes, vnder the paine of wairding of his person. Ia. 5. p. 7. c. 96. Ia. 6. p. 11. c. 74. And suld bring with him his court buikes, with the compt of escheites and vnlawes, intronnetted with be him, togidder with the registers of hornings registrate be him in his buikes, and of all sailings. Ia. 6. p. 12. cap. 124. And suld finde cautioners, burges men with *Edinburgh*, acted in the buikes of Councell, that he sall zeirly make compt in the checker, and pay-men of all things intronnetted with be him. Ia. 6. p. 11. c. 80. Ia. 6. p. 14. c. 230. And gif he be found restand at the fute of his compt onie summes of silver, to the King, or his Thesaurar: it is leasum to the Thesaurar, as he pleasis, to poynd the Schireffe and his deputes, or the partie to quhem sailing is given, for the saides summes, conforme to the buike of *responde*. Ia. 6. par. 11. c. 71.

The jurisdiction and office of the Schireffe, consistis allwh in particular civil actions and pleyes, and decision thereof in his court, and likewise in execution of decreets, given be evil judges, sik as the Lordes of counceyl, and session. The Schireffe and his deputes is iudge competent to thir pleyes and actions after following; That is, the pley or mite of barrones beuaint batron and baron. The mite of ane reasonable Perce pertaining to women, as lauchfull Wives, be reason of the decease of their husbandes complaintes tuiching the breaking of appoyntments, agreeances, and end of pleyes made in court, and not kepted. *Lib. 1. c. 4. c. contingit. 31. lib. 2. c. dos. 19.* Mites and pleyes of natives, that is, of bondes and seruantes fugitive fra their awin masters, making of Homage, receaving of relieves, allwa actiones and pleyes of debt aucht and be ane to ane vther, may be followed before the Schireffe, with other actiones of wrang and vnlaw. *Lib. 1. c. 4. lib. 2. c. consequenter. 32.* The briue of fricht and free tennentes suld be determined before the Schireffe, in the seconde instance, quhamas complaint is maid, that the court of Barrones hes done wrang there anent, be reason wranges done in Bartone court, war romeded in the Schireffe court, be the Schireffe court, be the auld law of this

Realme



Molestation,  
ons,  
and cogni-  
tions.

removing.

Brieve of  
inquest.

Commis-  
sions.

Realme. *Lib. 1. c. placita. 6. lib. 3. c. solent. 17. c. ad vicecomites. 19.* Bot be the law & practick now used & observed, the Lordes of Councell & session ar onely judges competent, baith in the first instance & second, to all actions and matters tuiching fee and heritage. Sic-like, all pleyes tuiching Meithes and Marches of landes, betuixe neighbour and neighbour, suld be decided and declared be an assise before the Schireffe. *Lib. 2. c. ult.* Conforme to the quhilk all actiones of molestation, in troubleance of the possession of propertie, and commontie suld be decided be the Schireffe of the Schire, or uther ordinar iudge, quhair the lands lyes, be the determination of ane assise, of the best and worthiest of the cuntrie, least suspect, and that best knowis the veritie. *1a. 6. p. 11. c. 42.* The Schireffe is iudge competent to the removing of tennentes fra lands, conforme to the warning maid against them to that effect. *Mar. p. 6. c. 39.* The Schireffe is Iudge to the brieve of inquest, quhair be ane desiris to be served and retoured narrest and lauchfull aire to his predecessor. *Lib. 1. c. Generalia. 25. Quo. attach. c. De brevibus 31. Et. 1. p. 9. c. 127.* Quhilk brieve suld be served in plaine court, be the maist worthie of the Schireffedom, summond and called upon the promotion of fiftene dayes. *Stat. Rob. 3. c. 1. vid. breve de morte antecessoris.* And na commission for serving of the said brieve, or uthers suld be graunted to ony person, in preiudice of the Schireffe, Steward, or Baillie, untill he be first warned to heare and see the samin given, or else to alledge ane reasonable cause quhy the samin suld not be granted. *1a. 5. p. 6. c. 82.* And in case any sik brieve fall happen to be served and retoured before ony Iudge, commissioner, the precept of saisng suld be direct forth of the Chancellerie to the Schireffe, as is beforesaid, *verbo; breve de morte ante essoris.* For generallie all precepts of saisng furth of the Chancellerie upon retoures suld be direct to the Schireffe, & uther Iudges ordinar, with the clause, *Capiendo securitatem.* *1a. 6. p. 12. c. 124.* And all saisngs passing upon sik precepts suld be given be them, their deputes and Clerkes. *Mar. par. 6. c. 34.* Quhair of they suld write the day and zeir of the giving of ilke saisn, and bring the samin, togidder with all uther saisngs, given be private Notare zeirly to the Checker. *1a. 4. p. 6. c. 89. Ma. p. 6. c. 47. 1a. 6. p. 11. c. 65.* Sic-like, actiones of eiection and spuilzie, pertainis to the schiriffe,



Schireffe, and his iurisdiction. And therefore, gif on / man is wrangecoullie ejected furth of his land, or violently spuilzied, of his gudes and geare : The Schireffe suld take cognition there-ament. And the eiection of spuilzy beand proven, sal cause him quha is eiected or spuilzied, to be restored to his avin lands, guds, and geare, with the profitis thereof, and damage and skaith sultained be the partie. *Aff. reg. Da.c. stat. 31.* Speciallie gif the persons quha ar eiected and spuilzied, be religious men, Clerkes, Widdowes, aged persons, or sik vthers, quha be the Law. ar excused fra singular battell. *Aff. reg. Da.c. stat. Alex. c. 5. stat. Ro. Br. 3. c. 6.*

And in eiections, quhen ony man is eiected furth of his lands, see, or heritage: The Schireffe at command of the Lordes of Session, sal furth with gar restore the groundes, without prejudiee of onie partie, and recognosce the landes in the kingis handes, vntill they be lowsed be the King. And in the meane time, inquisition is taken be the Schireffe, quha was lauchful possessor of the landes : And the samin beand retoured to the King, the lands ar letten to borch to the said person. *Ia. 2. p. 14. c. 64.* And generallie, the Schireffe suld arreist, and put in the Kings ward, all maisterful and wrangeous occupiers of vther mens lands, and sal cause the groundes to be maid voide of them and their guds. *Ia. 2. p. 14. c. 78.*

Eiections

Concerning spuilzie, the Schireffe suld compel spuilziers, and their receipters (the spuilzie being proven) to restore their guds spuilzied, and charge them to answer therefore, as law will. And in case they disobey, he suld denunce them rebelles, and put them to the Kings horne. Quhairin, gif he be negligent or partiall, he sal be punished as the principall spuilzier. *Ia. 2. p. 5. c. 10.* The like restitution suld be maid be the Lords of regalities, quhilk gif they do not, the Schireffe suld cause the samin be done within the regality. *Ia. 2. p. 5. c. 11.* Last of all, actions of recent spuilzie may be persewed before the Lordes, or the Schireffe, within fiftene dayes nixt after the committing of the spuilzie. *Ia. 4. p. 6. c. 65.*

Spuilzie

Execution not onely of decreetes of eiection and spuilzie, as saide is, bot also of all vther decreetes perteinis to the Schireffe, be reason of his office and iurisdiction. For ane decreete beand given against ony man, letters ar direct to the Schireffe

Execution  
of de-  
creetes.

reffe of the Schire, steward, or baillies to burgh or to land charging them to put the said decreete to execution : quhilk suld be done be ilke ane of them, within their awin iurisdiction, and suld receive for their office and fee xij, d. For ilk li. recovered or contained in the decreete, to be taken of him, against quhom the decreit is given. And gif the Schireffe or vther officiar failzieis to do the same, he sal tene his office for three zeires, gif it be heretable : and perpetually, gif he hes it in life-rent, or for ane certaine time, and sal pay the principall summe recovered to the partie, with the costs and expenses susteined be him. *Iam. 4. p. 3. c. 30. Ia. 4. p. 6. c. 67.* Likewise, all sentences and decreetes given be the Lordes of the session, suld be execute be the Schireffe of the Schire, or his deputes, quhair the party dwellis, against quhom the decreet is given : or else be Heraulds, Purservants, or Maisers : and for execution theirow, nane sall take mair nor is prescribed be the act of Parliament foresaide, except be liberalitie of the partie, vnder the paine of deprivation of their office. *Ia. 5. p. 5. c. 58.*

**Poynding.** For the better and mair reddie execution of decreetes : It is leasum to the Schireffe to poynde the guds and geare pertaining to the debtor, be the brieve of distresse : quhilk brieve perteinis to the Schireffis iurisdiction. *Lib. 1. c. Placitum. 7.* Quha suld cause execute the forme of poynding, and taking of distres. *Quo. att. c. de brevibus. 31.* Bot the Schireffe or vther iudge may not poynd ony man, or take ane distres, bot within his awin iurisdiction allanerly; And gif he dois in the contrair, it is plaine riefie or spuilzie. *stat. Rob. 3. c. Item. stat. 13.* And it is not leasum to the Schireffe, or ony vther iudge, within his awin iurisdiction, to poynd oxen, horse, or vther guds pertaining to the pleuch, or that labouris the grounde, the time of the labouring thereof, gif there be vther streinzieable gudes, quhilk may be poynded. And gif ony man will take ane poynd within the Schireffedome, he sall cum to the Schireffe or his deputes, and desire him to concurre and assist with him thercintill. And thereatrer the Schireffe or his deputes, sall passe with him to the house of the debtour, fra quhom the poynd suld be taken. And gif the debtor confessis the debt, and priewis payment thereof to be maid be him, or be vthers in his name; na poynd suld be taken. And gif ony is taken, the samin suld be delivered againe; vtherwaies, gif he grantis

grantis the debt, and proovis it not payed; the Schireffe suld take the poynd, and cause the creditor be payed. And gif the debtor denies the debt, the poynd fall not be taken fra him, except it be manifest, that the debt is auchand to the creditor; because na distresse or poynd suld be taken bot for debt confessed or proven. *Lib. 4. c. Si quis namos. 30.* And gif the debter hes na moveable gudes, or hes not sameikle within the Schire, as is equivalent to the debt recovered against him. And gif it happenis that he have some moveable gudes within ane vther Schireffedome: The Schireffe of the vther Schire, within the quhilk the saids moveable gudes lyis, fall cause the same to be poynded & comprised, & the creditor to be payed. And sailzieing of moveable gudes, the Schireffe fall cause the landes and immoveable gudes pertaining to the debtor, to be conforme to the act of Parliament, and cause the same to be fauld and annalied, to the availe of the debt, and the creditor. *Ia. 2. p. 5, c. 36.*

Diverse and sundrie criminall actiones, perteinis and belangis to the Schireffe, and his jurisdiction, quhair of some are capital, vthers are pecuniall, as after followis. And first, generally the Schireffe may follow and persew all trespassours in the Kings name, and cause his maires and seriantes arrest them, albeit na partie persewer compeir or assist. *Ia. 1. p. 13. c. 139.* Like as the Thesaurar and advocat may persew slaughter, and vthers crimes, albeit the parties keip silence, or vtherwaies privately agree. *Ia. 6, p. 11. c. 76.* And swa when ony complaint is made be ony person to the Iustice Generall, or to the Schireffe, or to ony vther officiar of law within burgh, or without the same: The Schireffe, or vther iudge, fall summon baith the parties: And gif the deede be done be Chaud-melle, the partie fall persew, as effeiris of the law. Bot gif it be done be fore-thocht-fellonie, the committer thereof sal be accused of the breaking of the Kingis peace: Hee fall satisfie the partie, and be imprisoned in the Kings prison: because his life and guds are in the Kings will. *Ia. 1. p. 5. c. 51.* And gif ony trespassor be fugitive for ony crime, the schireffe suld persew and follow him: And ilke Gentle-man, not foland the schowteor out-horne, sal pay xl. s. And ilk zeaman xx. s. to the king *Ia. 1. p. 6, c. 28.*

Criminal  
causes per-  
teining to  
the Schi-  
reffe.

- Murther** The Schireffe, Crouner, or Provest within Burgh, suld cause bury him quha is murdered. *Leg. Mal. Mac. c. 1.*
- Witchcraft.** The Schireffe suld punish Witches, Sorcerers, Necromancers, and them quha seekis helpe, response, or consultation of them unto the death, as weil the abuser, as the seeker of the response, or consultation. *Mar. p. 8. c. 78.*
- Messe** The Schireffe and uther ordinar judges, suld search, take, and apprehend, all them quha not being lauchfullie admitted, dois minister the Sacraments, sayis Messe, or hearis the samin, to be brocht to the King, to be punished conforme to the Law. *Ia. 6. p. 1. c. 5.*
- Falſe cuinzie.** The Schireffe suld take strait inquisition, of them quha strikis falſe or forbidden cuinzie, and suld cause them to be brocht to the King, to be punished to the death. *Ia. 3. p. 2. c. 18.*
- Slauchter** The Schireffe beand certified of slauchter, committed within his Schireffedome and royaltie thereof, he sall incontinent rayſe & follow the slayer, with sonnd of horne, & convocation of the Kingis lieges. And gif he beis apprehended withreid hand, justice sall be done within that Sun. And gif he be taken & apprehended without reid hand, he salbe put in prison, and law sal be done upon him, within fourty daies: & gif he escapis or flyis furth of the Schireffedome, the Schireffe sall certifie the nixte Schireffe thereof; quha sall persew and follow the slayer, in maner foresaid. And consequently ilk Schireffe sall certifie uther, untill the trespassour be put toorth of the realme, or elſe brocht to iustice: The like certification suld be maid be the Schireffe, to the Lorde of regalitie, quha suld persew the malefactoures, as the Schireffe suld do. *Ia. 1. p. 6. c. 89. Ia. 3. p. 5. c. 35. Ia. 4. p. 3. c. 28.* Quhen the committer of slauchter cummis to the Girth: The Schireffe suld advertise the Maister of the Girth, and cause the slayer be put to the knowlege of ane Assise, quhidder the slauchter committed be him, was done upon suddaintie, or before-thocht felonie. And gif it be found suddaintie, he sall be restored to the libertie of the Girth & Sanctuary, And gif it be founde fore-thought felonie, he salbe punished to the death. *Ia. 3. p. 5. c. 33. Ia. 5. p. 4. c. 22.*
- Law-burrows.** The Schireffe suld not onely punish committers of slauchter, as said is; bot also suld after his power, slay and stop the committing thereof: And therefore, quhen ony man hes doubt of his life, either be ony deede, menacing, or violent presumption,

tion, and verifies the samin be his aith, or uthr probation. And for that cause askis law-sovertie to be given to him be the Schireffe, that he fall be harmeles and skaithles of nim of quhom he dreads the bodily harme. The Schireffe suld grant his petition, and gif he refusis the same, he fall pay forty pound to the King, and assyith the partie. *Ia. 1. p. 9. c. 129. Ia. 2. p. 6. c. 13. Ia. 1. p. 14. c. 83.* And gif the law-borrowes happenis to be broken, the paine thereof suld be payed to the Schireffe, for the quhiik he fall be comptable in the Checker. *Ia. 3. p. 1. c. 5.*

It is leasum to the Schireffe and his deputes, to perslew ony person for theft; albeit na partie concur and informe him there-arent. *Quon. attach. c. ubi aliquis 25.* As likewaies he is judg competent to theft and slauchter, quhen ony person compicris and infilis with him in the persute. Bot gif the saidis crimes be followed be way of dittay: the iustice generall is Iudge thereto. *I. 1. c. 2.* And quhen ony thiefe is condemned before the Schireffe, and execute for theft: all the moveable guds, quhilk perteine to him, suld justly perteine to the Schireffe. *lib. 2. c. Forisfactum 55. de Iudic. c. Praterrea. 148.* Bot gif ony man findis in ony town, his awin silver stollen fra him: It is not lesum to him to intronet-there-with: bot he salde put and leave the samin in the keiping and custodie of honest men of the towne, and sal declare the samin to the Schireff, quha sal compel the Provest or ruler of the towne, and three men with him, to make faith that hee knawis na-thing of that theft: and thereafter the compleiner proovand the silver to be his awin, suld receive the samin to be used be him, as his awin proper geare. *Lib. 4 c. Si quis 21. stat. Alex. c. assisa. 20.* All thieves suld be punished to the death: And it is not leasum to the Schireffe, to sell ony tiese, or to fine with him for theft-done, or to be done, under the paine of life and gudes. *Ia. 1. p. 13. c. 135.*

All Sorners taken and apprehended, suld be delivered to the Schireffe, that Iustice might be done upon them, as thieves & rievvers. *Ia. 2 p. 11. c. 45. Ia. 1. p. 10. c. 77.* The Schireffe suld arrest and challenge all torners, quha lye & sojournis upon the Kings-liche, and compell them to assyith the King, and the partie compleinand. And gif na partie compleinis, he sal inquire at the head court, aient sik trespassours: And as hee ony findis, suld punish them. *Ia. 1. p. c. 7.* And mairover, the

Schireffe.

Schireffe and all uther officiars, alsweil to Burgh as to land, sal punish forners, over-lyars, maisterfull beggars, fuilles, bairdes, vagaboundes, put them in ward, and banish them the cuntry. *Ia. 2. p. 6. c. 22.* And all oppressours, strang vagaboundes, beggars wandring athort the realme, upon pretence that they ar Schipbroken, or banished for slauchor uther odious crimes: And dissimulat thieves, and abusers, called *Egyptians. Ia. 6. p. 12. c. 124.*

Sick like, the Schireffe suld arreist all idle-men, and put them in sure firmance, untill it be knawin, quhairon they live, and take caution of them, that the inhabitantes of the cuntry, sal be harmeless and skaithless of them: And that they sall get maisters, or passe to crafts within fourty daies; quhairin gif they failzie, the Schireffe suld inaprisoun them untill they be punished at the Kingis will. *Ia. 1. p. 3. c. 66.* Mair-over, the Schireffe suld compell idle men, to passe and labour for wages within Schippes, maid and prepared for fishing, of great and small fish, under the paine of banishment furth of the Schirefdome: quhairin, gif the Schireffe failzies, he sall pay xx. pund to the King, in the Checker zeirly. *Ia. 4. p. 4. c. 49.*

All they quha are suffered to beg alandwart, suld have ane certaine takin given to them be the Schireffe. *Ia. 1. p. 1. c. 25.* Vnder the pain of burning on the cheek, and banishment off the cuntry of the beggars: and of ane unlaw of L. s. to the King, to be payed be the Schireffe, in case he failzie in keiping of the premisses *Ia. 1. p. 2. c. 42.* And mair-over, the Schireff, Proveest, & Baillies within Burrowes of royaltie and regaltie, sal pay ane Mark for ilk beggar that beis found beggand, except he be cruiked, seek, or weake. *Ia. 4. p. 6. c. 70.*

And mair-over, the Schireffe suld suffer na beggar to beg within ony Parochin, bot onely them quha ar borne within the samin. For ilk beggar suld be susteined within his awin Parochin, and suld have the marke thereof. *Ia. 5. p. 4. c. 21.* And for punishment of strange idle beggars; all Schireffes and uther judges suld make prisones, stockes, and irones within Burgh, throw faire townes, and at all Paroch Kirkes. *Ia. 6. p. 12. c. 147.* And suld punish beggars, conforme to the act maid be *Iam. 6. p. 6. c. 74.*

To the jurisdiction of the Schireffe, perteinis to cognosce and decide anent strife, spuilzies, strakes, woundes, and breacking of the Kings peace. *Lib. 1. c. 2.* And the Schireffe suld take

Tuilzies  
and breack-  
ers of the  
Kingis  
Peace.



tak inquisition anent the breaking of the kingis protection, and compell the breakers thereof to pay ten punds to the King, and assith the partie. Ia. 1. p. 11. c. 134.

The Schireffe suld destroy veschelles, creilles, and vther ingines, quhilke stoppes Smoltes to passe to the Sea. Iam. 2. p. 14. c. 87. Ia. 3. p. 5. c. 37. He suld cause the measures and quantity of the cruves and zaires to be keiped in waters quhair the sea flowis and ebbis: To the effect the frie of the fish, may ascend and descend: and suld likewaies give up dittay to the justice, in his aire, upon slayers of Salmond in forbidden time. *stat. Alex. c. hac est assisa* 27. *L. g. burgh. c. hac est assisa* 113. *stat. Rob. 2. Br. c. Item ordinatum.* 12. The Schireffe suld destroy, cast downe, and hald downe, all cruves within his boundes, under the paine of xx. pund to be payed to the King. Ia. 4. p. 2. c. 15. Mar. p. 8. c. 68. For the quhilke cause, speciall commission is granted to him. Ia. 6. p. 6. c. 85. Ia. 6. p. 7. c. 111. He suld execute the afts maid anent herring and quhite-fish, and uptake the escheir of contraveeners thereof, and make compt in the Checker. Ia. 6. p. 6. c. 89.

Cruves & fishings.

The Schireffes suld hunt and slay the Woolfe, and her Quhelses, three times in the zeir; and all in-dwellers of the Schire, suld ryse with him, under the paine of ane Wedder. Ia. 2. p. 14. c. 88.

Hunting of the Woolfe.

The Schireffe suld cause bow-markes to be maid for Archerie, in ilk paroch, under the paine of fourty shillings, to be up-taken be him to the Kingis use. Ia. 4. p. 3. c. 32.

Archerie.

The Schireffe suld punish all them quha schuttis at Deare, Rae, or vther wild beasts, or wilde-fowles, with Culverings, Pistolettes, or Gunnes. Ma. p. 4. c. 9. Not onely the Schireffe, bot all judges ordinar, suld accuse at particular diettes, all them quha schuttis with Culvering, Croce-bow, at Da, Rae, Hart, Hinde, Cunning, Dowe, Herron, or fowle of riese. Ia. 6. p. 1. c. 16. p. 7. c. 123.

Schutting with fire warks.

The Schireffe, and all vther officiares, baith to burgh and to lande, at ilke Court, sall inquire quhat persones byis victuall, and haldis it to ane dearth: and declare their names to the King, that they may be punished as ockerers, and the victuall escheit. Ia. 2. p. 6. c. 23.

For estailers.

Mairover, the schireffe suld escheit all gudes quhilkis are forestalled, coft, or arled be forestallers, and in-bring the twa part:

part.

part thereof to the Kings use; and the thrid part to himselfe,  
Ia. 5.p.4.c.20.

And sik-like, the schireffe suld punish, be confiscation of all  
their moveable gudes, all them quha transports Nolt, Scheip,  
or vther cattell furth of Realme. Ia. 6.p.7.c.124. Ia. 6.p. 12.c.  
149.

The schireffe suld punish destroyers of planting of Wood-  
des, Forrests, orchardes, broome, breakers of Dow-cattes,  
cuuning aires, Parkes, stankes, zairdes; slayers of haire, ma-  
kers of Mure-burne in forbidden time, and vther destroyers  
of haining and policie. Ia. 6.p. 6.c.84. And likewise, suld in-  
bring to the Kings vse, the paines of them quha plantes not  
wooddes, inakis not hedges and haining. Ia. 5.p.4.c.9.

Fute-ball.

The unlaw offourty shilling, suld be taken vp be the Schi-  
resse, sia players at the fute-ball. In case the Lord of the land  
permit to do the samin. Ia. 1.p.1.c.17.

Caution  
found be  
the warda-  
tar and v-  
thers.

Quhen ony landes fallis, be reason of warde in the Kings  
hands, or of ony vther superiour: Or quhen to burgh or to  
land, lands ar given in conjunct-fee, or life rent, The Schi-  
resse, or the Baillies, sal cause the wardatar, finde caution not  
to destroy the bigginges, or vther policy: and that he fall su-  
steine the aire, not havand sufficient blench or few-ferme  
landes. Ia. 4.p.3. c.25. And gif the Schireffe, or vther judge  
be negligent, in requiring caution, being required thereto, be  
the heretour or his friends: he fall resound and pay to the he-  
retour of the lands, at his persfite age, all damage and skaith  
sustained throw his negligence. Ia. 5.p. 4.c.14.

Claithing

The Schireffe suld take inquisition of them quha wearis  
Claith of gold, Silver, Velvet, or silkes: contrair the actes of  
Parliament, and send them to the King to be punished. Ia. 3.p.  
6.c.45. Ia. 6.p.7.c.113.

Banquettes

Al they quha vis excessse or superfluity in banquettes, con-  
trair the tenor of the act of Parliament, suld be punished be  
the Schireffe and vther Judges within the Royalty and rega-  
lity, Ia. 6.p.7.c.118. And sik-like, the Schireffe suld send to  
the Thesaurar, the names of all persones quha breakis and  
contraveenis the act of Parliament maid anent the ordering  
of ilk mannis house and quantity of meat and dishes, prescri-  
ved to ilk man of all estaites, that they may be accusid and  
punished therefore. Mar.par. 5.cap.26. The Provost and Bail-  
lies

lies within burgh, suld cause Hostellares take reasonable price for ane mannis dinner and supper, effeirand to the prices of victualles. And suld also set downe reasonable prices upon ilk mannis warke, and suld deliver the samin to the Schireffe, that hee may cause the samin price be keiped to Landwart. Mar. par. 5. c. 22. Mair-over, the Schireffe suld punish the Barronne, quha examinis; nor prices nocht the wark-man-ship of ilk craft within his Barronnie, with the paine and vn-law of ten poundes. Ia. 1. p. 7. c. 102.

Craftes-  
men.  
Taxation

The Schireffe suld sende or bring a'l Notars, quha are Temporall men, within the bounds of his office, and present them to the Lordes of Councell, to be examined be them, quhidder or nocht they be worthy or qualified for the office of the Notarie. Mar. p. 5. c. 24. And the Schireffe, with sik persones as the King pleasis to joyne to him, suld call all Notars before him and examine them. Ia. 4. p. 6. c. 75.

The Schireffe suld take and inbring all taxationes, and make comprand payment thereof. Ia. 4. p. 2. c. 9.

The Schireffe with the Barronne or Lord of the lande, suld see and provide that ilk man be armed according to his estate & rents: and sall cause weapon schawinges to be maid zeirly, after the Octaves of Pasche. *stat. Rob. 2. Br. c. Ordinatum. 27.* Or at the least four times in the zeir. *Ia. 1. p. 2. c. 44. Ia. 4. p. 3. c. 31.* Or upon Thursday in the Whitsunday oulk. *Ia. 4. p. 6. c. 75.* Or twise in the zeir throw all the Realme, in the Moneths of *Junij* and *October*, or ony uther day, as sall please the Schireffe, steward, or Baillie. Ia. 5. p. 6. c. 85.

The Schireffe suld execute the acte of Parliament, anent Victuall. the keeping or threshing out of victuals, and cause the samin to be keiped and obeyed, under the paine of tinsel of his office, induring the Kings wil. Ia. 2. p. 9. ca. 37.

The Schireffe and Chalmerlaine, sall cause all mettes and measures to be keiped, used, and observed, conforme to the tenor of the acts of Parliament, as they will answeere to our Sovereine Lord. Ia. 3. p. 4. c. 22.

Mettes &  
measures.

The Schireffe and his deputes suld escheit and introniet with all horse pertaining to Earles, Lordes, Barronnes, and vthers, halden at hard meate, langer nor the time prescribed in the acte of Parliament. Of the quhilk escheit, the ane halfe perteinis to the king, and the vther halfe to the Schireffe. Ia. 6. p. 11. c. 56.

Horse.

The

Escheittees

The Schireffe at command and direction of the Thesaurar, suld tak up, and intromet with the escheit guds and gearre pertaining to rebelles. Ia 6.p.6.c.75.

Excommunicat persone.

Divers and findrie persons ar disobedient to the Kings lawes, baith civil and criminall, and also refusis to obey and fulfill lauchfull decreits given and pronounced against them, be Judges Ecclesiasticall, civil, and criminall: for the quhilk cause, some ar excommunicat and cursed, vthers ar denounced rebelles and put to the horne: and therefore the Schireffe (to quhom perteinis the execution of the Kingis Lawes and decreetes) suld take and apprehend all cursed and excommunicate persons, at the desire of the Bishop, or his official, and put them in prison, vntil they satisfie God and the Kirk. *stat. 2. Rob. Br. c. Rex tali 31.* Specialie them quha hes remained vnder the censure of excommunication, be the space of forty daies. *Quon. att. c. Rex tali 76. stat. Rob. 3. c. Item 7.* To the quhilk effect, letters of caption being direct to the Schireffe, he suld execute the samin against all cursed persons. And gif they be fugitive, their guds and lands, gif they ony have, sall be comprised, for satisfaction of the party. And gif they have nane they salbe denounced rebels. Ia. 2. p. 5. c. 12.

Rebelles.

All Schireffes, Stewards, Baillies, and vther officiares, baith to burgh and to Lande, suld searh, seeke, and apprehend all rebelles beand at the horne, and bring them to our Sovereine Lordis justice, to be justified, conforme to their demerites; under the paine of tinsell of their office for three zeires, gif it be heretable; and in all time comming, gif it be Temporall. And mair over, to be accused for their negligence in the justice aires, or at particular diettes, as it sal please the King. Ia. 5. p. 7. c. 94. Mair over, the Schireffe, and all the saidis judges, alsweill within regality, as royaltie, suld searh, seeke, follow, persew, apprehend, and commit to warde, and present to justice, all declared traitors and rebellse, contemptandly remainand at the horne unrelaxed; and doe iustice upon them, if they have commission to that effect. And gif the said rebelles be fugitive, the Schireffe and vther iudges foresaids, suld make denuntiation thereof to the Schireffe, and iudges Ordinar, of the four halves about, & require them to use the like diligence, under the paine to the quhilk the traytours and rebelles ar subiect, or hes incurred. Ia. 6. p. 12. c. 124. And furder, the Schireffe

Schireffe suld concur and fortifie uther officers, to take up the escheit of rebelles, and suld make convocation of the Kings lieges to that effect, Ia.6.p.6.c.74.

Mair-over, all letters of horning, with the indorsation thereof, suld be registrat be the Schireffes Clerke, within fiftene daies, after the denuntiation. And being marked and subscribed be him, suld be delivered to the party. And sik-like, all relaxationes suld be registrat in the Schireffes buiks, within fiftene daies after the publication thereof. Ia.6.p.6.c.75. Ia.6.p.8. cap.142. And ilk Schireffe suld cause proclaim the names of the rebelles, at the mercat croce, of the head burgh, upon market daies, preceding the three head Courts, and fixe ane Catalogue containand their names upon the mercat croce, and in the Tolbuith: And send ane uther roll thereof to the Thesaurar, containand the names and causes, for the quhilk they were denounced. Ia.6.p.6.c.74.

Ratification of letters of horning.

Last of all, to the effect, that they quha are in *Bona fide*, be not deceived in bying of landes or gudes, fra them quha are interdicted or inhibit. For eschewing of sik fraud, the Schireffe, *Tanquam bonus pator*, suld cause all inhibitiones and interdictions, with the executioners thereof, to be registrat in his buikes, be his Clerke, within fourtie daies, after the publication of the samin. Ia.6.p.7.c.118.

Of inhibitiones and interdictions.

Quhat is the jurisdiction and office of ane Schireffe, may be caselie knawin be the lawes and constitutiones abone written: quhair of findrie containis certaine speciall paines to be enioyned to him, for his malice or negligence. And now I thocht gud to declare, certaine generall penalties, prescribed be the lawes of this realme. And first, the Chancellor, Iustice, Chalmerlaine, Schireffe, nor nane of their deputes or substitutes, sall susteine or mainteine pleyes, quarrells, or actiones, nor sall not take lands, or uther budde or rewarde from the partie, for hindrance or delay of Iustice. And gif ony fall happen to be convict thereof, he sall be punished at the Kingis will, and fall tine and foresauit his office, induring his life time. *stat. 2. Rob. Br. c. Dominus Rex. 22.*

Of the paines and punishment of Schireffes.

Secondly, in the time of King David the second: Because the haill communitie and inhabitantes of the Realme, compleinand heavily upon Schireffes, Maires, Serianides, and uther the Kingis ministers of the Law: It is statute and ordained,

that incontinent before the end of the Parliament : The iustice Generall, with the Chalmerlaine, suld call, and conveene before them, and the inhabitantes of ilk Schireffedome, all and findrie the Schireffes, and uther Officiares, alsweill heretable, as Temporall, and deputes : And taxe and modifie the damage and skaith done be them to the King and his lieges, to ane certaine summe : Quhilk taxation being maid, the Schireffe and uther officiares, suld be put to the knowlege of ane gud and sufficient assiste : And being found culpable, and convict, they suld incontinent be put in the Kingis prison, untill he, with advise of his Councell declare his will. And moreover, all the saidis Schireffes and other officiares, either heretable or Temporall, being filed and convict, suld forfealt, and tane their office, induring their life-time. *Da. 2.* In his Parliament halden at *Perth. 18. Feb. 1369.* And of his reigne the 40. zeire.

The Schireffe may bee removed be the Iustice, or punished be the three estates.

Thirdly, the Iustice Centrall, in his iustice aire, sall challenge and accuse the Schireffes and uther the Kingis officiares, and take cognition how they have used and exercised their offices. And gif ony of them be found culpable or faultie ; the iustice sall remoove him fra his office, untill the nexte Parliament, and sall put ane uther in his place, to use the office in the meane time. And moreover, the iustice sall take sufficient surety of him, under certaine paines, that he sall compeir the nixt Parliament to underly the determination and punishment to be intoynd to him be the Parliament, for his fault ; and he shall na waies be restored to his office, bot gif the three Estates think the samin expedient. *Stat. Rob. Br. 3. Ex libro Sconensi.*

Schireffe heretable and Temporall.

Fourthly, gif the Schireffe, or ony uther officiar of law, be lauchfully proven, or notourlie knawin faultie or negligent in the execution of his office pertaineing to him in fee and heretage, he sall tane the samin, and all the profites thereof, for ane zeir and day, and salbe punished in his person and gudes at the Kingis will, after the qualitie of the trespassse. And gif his office is Temporall, he sall tane the samin, for all the times he hes it ; and uther waies sall be punished, as said is. *Ia. 2.*

*P. 14. c. 77.*

Fiftly,



Fifstly, gif the Schireffe or ony judge Ordinar, will not execute his office, and minister iustice, he sall be punished, and put fra his office, for ane certaine time, aser the discretion of the King and the Councell, and punished at the Kings will, and pay the expences to the partie compleinand. And gif he be found partiall or culpable in the administration of iustice, and is Schireffe in fee and heretage, hee sall tinc his office for three zeires. And gif he be Temporall, havand his office for ane certaine time, he sall be put fra the samin perpetually: pay the expenses to the partie offended, and punished in his person, at the Kings will. *Ia. 3. p. 5. c. 26.*

Tinsell of  
honour &  
fame.

Sixtly, all Schireffes, and uther Iudges, alsweill Spirituall as Temporall, within regaltie and royaltie, sall do trew and equall iustice to all the Kingis lieges, without ony partiall counsell; or taking of budde, under the paine of tinsell of their honour, fame, and dignitie. *Ia. 5. p. 7. c. 104.*

Gif ony partie complainis upon the Schireffe, that he hes done to him wrang, in giving and pronouncing ony sentence or decreet against him: and desiris the samin to be extracted & delivered to him, upon his expenses: The Schireffe suld give and deliver the processe, led and deduced before him to the partie, upon his expenses: and suld take foure pennis for ilk acte allanerly. *Ia. 4. p. 6. c. 67.* At the least, he suld extract processe, decreets, give faisinges and retoures, at reasonable prices. *Ia. 6. p. 12. c. 114.*

Extract of  
processe.

## ΠΑΡΑΙΝΕΙΣ ΑΔ ΙΥΔΙΚΕΣ.

**O**mnis qui iudicare debet, Stateram in manu teneat: Nam aequalia & sine personarum exceptione esse debent iudicia. Nihil iniquius quam munera capere in iudicijs: Quia munera excacant corda prudentium, & subvertunt verba iustorum. Quia enim Balance iudicabitis, eadem iudicabimini. Quapropter, tu iudex, timeas Deum iudicem; ne forte eo iudicante, damneris. Stat. Wilh. cap. 27. Proinde sis Deum honorans & timens: Sapiens & in scientia potens: Veritatem sequens & amans: Avaritias odiens & detestans. de Maritag. c. 2. Cave iusticiam subvertas odio, per quod inventa aliqua malitiosa cautela, contra partem tibi exosam, reddis iudicium indirectum; vel cupiditate, dum corruptus muneribus, malitiose iudicabis: Vel timore, dum metu potentioris, vere iudicare non audes: Vel amore, dum causa amicitia defendis amicum, & suppressis inimicum. de Maritag. c. 4. Facias igitur iusticiam equaliter, tam pauperibus, quam divitibus. Stat. 2. Rob. Br. cap. 2. Quia omnes iudices & magnates, qui plus favent his quam illis in iudicio, aut malefactores ullo modo manu tenent, sunt falsi, & perjurati contra Deum, Regem & populum regni. Leg. Mal. Mak. cap. ult. in fine.

Scotia, Sum-time signifies that part of Scotland, quhilk is on the North part of the water of Forth. *Aff. reg. David. c. statuit. 21.* And is opposed to Lodoneium, quhilk now we call Lond. anc. For King David the First, in the third zier of his reigne, *Ann. Dom. 1126.* Be his Charter maid, *Omnibus Scottis & Anglis, tam in Scotia, quam in Lodoneio constitutis,* gave and dispensed to Saint Cuthbert and his Monkes in Durham (*Dunelmensi Ecclesia*) The lands of Coldingham, Lummesden, Renington, Eiton, Fisseweik, Auld Cambus, Swintoen, Pend. e-geist, and uthers, lyand in Lodoneio, quhilk now lyis in the Mers, and Schireffedome of Berwick. And in the actes of Parliament, iustices generall ar ordained to be ane or twa on the South side of the water of Forth: And ane or twa on the North side thereof. *Iam. 3. p. 14. c. 97.* Quhilk agreis with the act maid be King James the Second. *p. 3. c. 5.* Quhair it is statute,

statute, that the iustice on the South side of the Scottish Sea, set their Iustice aires, and hald them twise in the zeir. And also on the North side of the Scottish sea, as auld use and custome is. And in the Lawes of *Malcolme Mak-Kenneth. c.*

4. *Mare Scotia*, is taken for the water of *Forth*.

*Sectator*, Ane soytor in court, quhaiis qualities and office.  
*vid. verb. Sock,*

*Sek*, Of wooll, and furing of gudes be the seck, serplath, and tunne. *vid. Serplath.*

*Serianteria, Sergenteria. Lib. 2. cap. Dicitur autem. 72.* In the quhilk place, *pro Serianterijs, mendose legitur, Suggestoribus. Serianteria, à seriendo, as ministerium, a ministro, or servitium a servo*: Signifies ane maner of halding of landes, specially in the Lawes of England, quhair *Grande serjantye*, is quhen ane man haldis his landes of the King. For the quhilk he sulde passe with him in his hoist, or to beare his banner with him in his warres: Or to lead his hoist or armie. And hereto belangis warde, mariage and relieve, quhilk is ane maist speciall Knights service. *Petie Serjantye*, is quhen ane haldis his lands of the King, yeelding to him ane knife or buckler, an scheife of arrowes, ane bow, or uther sik service, conforme to his infestment: Quhairunto na waies belangis wardme, ariage, or relieve, quhilk we may call blench-serine, or *alba firma*. Read the statute maid be King *Edward* the first, King of *England. 18.* zeir of his reigne, anent wardes and relieves.

*Serjant, Sergeant*, ane French worde. For like as messengers coms fra the French word *Messiers*: Swa Sergeant likewise coms fra *Sergent, Quæ est vox composita, de Serrer, quod est includere, & gent, quod pro gente, plebe, vel populo usurpatur. Inaque Serjandus dicitur, qui jussu magistratus, quemlibet de populo reum criminis, in carcerem conijcit, seu includit.* That is, he quha at commande of the Magistrate, includis, or lockis in prison, guiltie persones delated, or suspect of ony crime. *Serjandus curia, or serviens curia*, the Serjant of the court, officiar, executor of letters or summondes, quha bee the interpreterours of the civill law, is called *Nuntius. vid. Recordum.*

*Serplath. Iam, 1. p. 2. c. 38. Iam. 2. p. 14. c. 68.* Conteinis four-score itanes, For the Lordes of Councell in *Anno 1527.* de-  
ceined

Three  
maner of  
furing of  
gudes.

cerned foure serplaithes of packed wooll, to containe sextene score stanes of wooll. Be the traffick of merchandes now used, The merchands usis to pay fraucht for their guds to Flanders be the Sek, To France, Spayne, and England be the Tun: And to Danskene, and the Easter Seas, be the serplath.

**1**  
Serplath. As I understand, ane Serplath of guds, is onely counted be-  
tuxt merchand and skippers, for furing of gudes to the Easter  
Seas, and fra thine hame to this realme. Swa that for every  
serplaith of gudes fured, or promised to be fured Easterward,  
the skippers is oblished to fuir hame to this realme, twa last of  
gudes: And this Serplaith of gudes is of nagreater quantitie,  
nor the sek of gudes to Flanders.

**2**  
The Sek  
Trois  
stane. And ilk sek, be the act of Parliament. Ia. 6. p. 7. c. 108, suld  
containe twentie foure stane of wooll: and be the dailie cal-  
culation of merchandes, fourty Trois stane. Ilk Trois stane,  
containes sextene pound Troys. And ilk pound weicht theirow,  
contenis sextene ounce Trois.

Seck of  
wooll. The sek of wooll, is commonly set be the skippers, to ane  
tun: ilk tun contenis sex hundreth pund Trois weicht. Ilk  
hundreth weicht, contenis five score pund weicht, quhilke is  
sex stane, and ane quarter Trois.

Trone  
stane. The wooll, quhen it is bocht be merchands, is bocht be the  
Trone stane, quhilke contenis commonly xix, pound and ane  
halfe Trois. Alwaies concerning the sek of wooll, I find na  
solide or constant weicht thereof: For some seckes will be  
mair, and some will be lesse nor fourty Trois stane: Bot com-  
monly the secke of wooll, contenis fourtie Trois stane, as  
said is.

**3.**  
Furing of  
guds be  
the last.  
Barrell. Ane last of guds fured hame, contenis commonly twelve  
Barrelles, and the auld forme of furing of gudes, fra Danskene  
to this Realme, was for every serplaith, as it is zit, twa Laste.  
Bot for this Laste, the skippers fuir hame, xiiij. barrelles,  
Ilk Barrell being of weicht, ane schip pund. And of licht  
guds, sik as lint and hempt, there is fured for the serplath, twa  
Last.

Pack. Ilk Last is twa packes: And ilk pack is als great als halfe  
ane sek of wooll skinnis, and contenis in weicht threttie sex  
sprusse stanes.

Ilk

Ilk sprusse stane, containis 28. pound Trois weicht.

Swa the last exactly weyed, will contene of our Trois weicht, sex score sex stanes, and for ane last of walx, that is sured hame be strangers, fourteene schipp pund. And be Scottish Skippers, twelve schipp pund. Also of Tar, pick, and sik-like wares, twelve great barrels for the last, and fourteene small Barrels. Thit great barrels, are called Hamburgh trees, and are in greatnesse not unlike to our Salmond trees, and suld contene fourteene gallons, and the smal barrels, are somewhat greater, nor our Herring-trees.

Last of walx.  
Of Tar, Pick,  
great and little  
barrels.

Likewaies of Rye meill, sometimes twentie foure barrels are sured for the last, specially be strangers: and be our awin Skippers, auchteen barrels for the last thereof. And ane last of Rye, is some-time auchteene bols, and sometimes nineteene bols in measure.

Rye meill.  
Rye.

Item, ten seckes of wooll, makis ane last of wooll.

Likewaies, ten hides makis ane daiker, and twenty daiker, Daiker. makis ane last. Twelve dowzane of glooves, or ledder points, makis ane grosse: and ane great grosse, containis twelve single grosse.

Grosse.

Ten stane of brasse makis ane barrell.

Sex barrels of English drinking bere, makis ane tun:

Twelve barrels of Salmond are bocht be the merchands for the last: Bot in furing of them over the sea, the skippers countis only nine barrels for the last.

Barrell of  
Brasse:

Last of Sal-  
mond.

And likewaies the seck, albeit it be counted in Flaunders to twelve barrels, zit twelve of their barrels containis sextene common barrels.

Flanders bar-  
rell.

The Fidler of lead, containis neereby, sexscore and aucht stane.

Fidler of lead.  
Schipp pound.

Ane schipp pound, containis sextene stanes and ane halfe, of Scottish Trois weicht.

Sexscore of skins, is reckoned to the hundreth.

As likewaies, sexscore elnes of woollen claith is counted for ane hundreth. Jam. 6. p. 7. c. 108. Quhilk is conforme to the auld use, observed in the daies of King David the second, as is manifest be the custome compt, maid be the Customer of the

Burgh of Striviling, the zeir of God, ane thousand, three hundred, sixty aucht zeires.

*Weichtes and measures in Orknay.*

**T**He Malt, Meale, and Beare, are deliverd in *Orknay*, be weicht in this maner. *Imprimis*, 24. marks makis ane setting. *Item*, six settings makes ane mail. *Item*, 24. meales makis ane Last. *Item*, of Meille and Malt called *Coist*, ane last makis ane Scottish chalder: *Item*, ane last and .ne halfe of beare conteinis 36. meales, 36. meales maks ane chalder. *Item*, the butter is deliverd in Barrels, quhair the quantity is great, bot quhair the quantity is small, it is deliverd in marks and lesh pounds: That is to say, 24. markis makis ane setting, as said is: And six settings makis ane lesh pound. *Item*, ane stane and twa pound Scottish, makis ane lesh pound. *Item*, 15. lesh pounds makis ane barrel. *Item*, 12. barrels, makis ane last. *Item*, the flesh is deliverd be apprising, *viz.* 10. meales makis ane sufficient Gow, and ane sufficient Oxe. Also, ane gild Oxe is apprisd to 15. meales, and ane Wedder is four meales. *Item*, ane Goufe is twa meales. *Item*, ane Capon is halfe ane Goufe, *viz.* ane meale.

*Servicium militare*, Knichtes-service, and specially concernis ward and relieve. *Vide Serjanteria. Vide Hambers. Vide Ward.*

*Serviens Curia, serjandus curia. Leg. Malt. Mak. c. 3.* Ane serjand, or officiar of Court, the executour of summonds, quha summondis and attachis ony person to compeir in ane Court, to answer to ane uther, conforme to law and reason. *Molins in filo super cur. par. 1. c. 20.* Quha is called *serviens*, because he suld sweare to serve lealely and trewly the King, in execution of his office. *Quon. attach. c. Nullus 57.*

*Setter-dayis slop, stat. Alex. c. hac est Assisa 27. Leg. Burg. c. hac est Assisa 113. Jam. 1. p. 1. 26. Maii. c. 11. Jam. 4. p. 2. c. 15.* quhilk statute maid, as is alleaged be King *Alexander*, is ascribed to King *David*, be King *James* the fourth, in the place fore-said: The *Setterdayis slop* is ane space of time, within the



the quhilk it is not leasum to take Salmond-fish: that is, fra the time of Even-sang after-noonie on Satterday, untill the rising of the Sun on Mononday, *stat. 2. Rob. Br. c. Item ordinatum 12. stat. Rob. Br. t. 8. Leg. Forest. c. Omnes aqua 85. Iter. Camer. c. calumniabuntur 16.*

*Siminellus, Leg. Burg. c. 122.* From the Latine word, *Simile*, quhilk signifies the best and smallest part of the Quheat or floure, quhite bread, or main-bread: In the quhilk signification, in the Dutch tongue, it is commonly called *Semmell*.

*Sok, Lib. 1. cap. 3.* Ane auld word used in Chartoures and infestments, quhilk in findry auld buikes containe the municipall Lawes of this Realme, is called *señta de hominibus suis, in curia, secundum consuetudinem Regni*. Swa after my opinion, he quha is infest with *Sok* (quhilk now we call *Soyte*, from the French word *Suive, h. c. sequela*) hes power and liberty to hald Courts within his awin Barronnie or lands: In the quhilk Courts, *homines sui*, or his vassals suld give *Soyte*, and send for them, ane quha is called *Soytor*, or *Señtor*, *a sequendo*: Because he suld follow the Court, in the quhilk hee suld compeare. This office was very profitable, for furthering of justice. And first, he quha is obliged to give *Soyte* in the Court of his Over-lord, suld doe the samin, conforme to the tenour of his infestment, and na uther-waies. *Leg. Forrest. cap. nullus 68. cap. Si hereditas 69.* And gif he aucht three *Soytes*, be his infestment: he sal compeare bot at three head Courts in the zeire, without Summonds or warning. *Mod. ten. cur. cap. 1. cap. 13.* Na Judge aucht of law, or of reason, to except ony man in Court as *Soytour*. Bot gif he can make sufficient and lauchfull report of processe, doome, judgement, and in lauchfull forme, give and pronounce doome of Mutes, and pleyes in Court, followed and defended before him in Court. *Mod. ten. cur. cap. 38. Quoniam attach. cap. Nullus señtor 20.* And ilk *Soytour* before he be admitted be the Bailly or Judge, suld be examined in three Courtes, gif hee can make records of the Courts, and give sufficiently ane ward, or ane doome of wards or doomes, asked in the Court or not. And then quhen hee is be his fellowes admitted, hee may not afterward for weak-

*Señtor.*

Three *Soytes*,

*Soytors* suld be qualified:

The aith of  
ane Soyttour.

The Soyttour  
unlaw is the  
absentis.

Falling of  
doomes.

ness of knowledge be rejected. *Quoniam attach. nullus* 20.  
Ane Soyttour, is obliged to make faith, that he sal lealely  
and trewly make record of Court, thanis of the claime, libell  
and proceffe, and sall pronounce lauchfull and trew sentence, ac-  
cording to the knowledge given to him be God; And sall af-  
ter his understanding, lealely and trewly serve, induring the  
time of his office. *Stat. Gild. c. 50.* The Court beand fenced,  
the Serjand thereof sal call the Soytes, and defalt the absents,  
that are not lauchfully effoinzied: And gar ane Soyttour of the  
Court, deemé them in ane unlaw, with the consent of his fel-  
lowes and Colleges. *Mod. ten. cur. c. 1.* Be the auld law of this  
Realme, and actes of Parliament. *Iam. 4. p. 6. c. 95.* Doomes  
and decreetes given and pronounced be Soyttours, in ane infe-  
riour court, was falsified and reduced in ane superiour Court,  
as the proceffe of brieves wrangously deduced in Barron Court,  
was falsified in ane Schireffe-court, and doomes given in the  
Schireffe-court, was falsified in the Justice-court. *Lib. 2. c. Dos  
duobus* 19. And last of al, doomes pronounced in the Justice-  
court, was falsified in Parliament before the Lords, called *Au-  
ditores querelarum*, in this maner contained in the Register,  
7. Octob. 1476. *Datum fuis judicium infra-scriptum, per os A-  
lexandri Dempster judicarii Parliamenti, in prasentia Serenissimi  
Principis Jacobi tertii. S. D. N. Regis, cum corona in capite suo &  
sceptro in manu seden. in Cathedra Iustitie Parliamenti, sub hac  
forma:* The Lords ehosen be the three Estaites of this present  
Parliament, upon discussing of the doomes, delivers and de-  
claris; that the doom given in the Justice aire of Ednburgh, the  
12. of July last by past, be the mouth of *Andrew Blackford*, soy-  
ttour, for the lands of *N.* for *Iohn N.* and *Ionet M.* his spoule,  
and againe called be *David Balfour* of *Caraldstoun*, fore-spea-  
ker for *Archbald N.* was evil given, and weil againe said: For  
diverse reasons schawen and understand to the saidis Lords:  
And therefore ilk soyttour of the said doome, and their lords,  
ilkman be himselfe, is in ane amerciament of the Court of Par-  
liament, sik as effeiris to be taken in the Justice aire, and in ane  
unlaw of the said Justice aire for them: And in ane unlaw of  
Parliament among them, al sik effeiris of the Law: and this I  
give

give for doome. Swa it is manifest, that in all Courts inferior to Parliament, the soytours pronounced the doome. And gif the doome given be them in ane Barron-court, was falsified in the Schireffe-court: All the soytours payed bot ane unlaw. Bot gif the doome given be them in the Schireffe-court, was falsified in the Justice-court, ilk soytour payed ane unlaw of ten pounds, of the quhilk diversity, the reason is contained in *Quon. attach. c. quilibet 7.*

*Sokmanria*, or Soccage, is ane kind of halding of lands, quhen ony man is infest freely, without ony service, ward, relieve, or marriage, and payis to the Maister lik dewty, as is called, *petitis serjantie*. Or quhen ane haldis his lands in the name of Burgage, or in *Libera Eleemosyna de Maritag. c. 1.* *Soccamannus*, is called ane vassal, or Free-halder, quha haldis his lands in manner foresaid, or in blench ferme, *sive nomine alba firme: Et opponitur militi, qui tenet per servicium militare*: That is, be service of ward and reliefe: *Lib. 2. c. Si quis plures 30. c. Et barones 41.* And in *Magna Carta* of England. *An. 51. Hen. 4. c. 27.* Mention is maid of sindry formes of halding, *viz.* Free-ferme, Burgage, Soccage, and Knight-service. Reade the Statute maid be *Edward* the first, King of England, the 18. zeire of his reign. Uthers alleagis, that *Soccagium* cum fra *Socage*, *sive Aratro*, affirming that Soccage is properly, quhen the tenent is bound and oblished to cum with his pleuch to teill and labour ane pairt of the Lords lands. Concerning tenures, and diverse halding of lands; reade the Treatise written be *Littleton*.

*Stallangiatores*, a *stallo*, Cremers, or Forrairie merchandes, quha within Burgh, in the time of Faire or Mercat, payis certaine dewty for their stal or stand, in the quhilk place they sel their merchandice: For it is ordained, that ilk stallanger sal either agree with the Provest of the Burgh, in the best forme as he may; or else ilk mercat-day, sal pay to him ane halfe-pennie. *Leg. Burg. c. Quilibet 39.* And in the auld forme of customs, it is called, the stallenge of the mercat: And *Leg. Burg. c. Mercenarius 40.* It is called, *Stallum* or *Botha* in *Foro*.

*Stingidint*, *Leg. Burg. c. Sciendum est 9.* Ane dint, or straike with ane sting or Barron: In Latine, *Fustigatio*.

*Sterlingus*; Est genus ponderis, ane kind of weicht containing 32. comes, or grains of quheat, *Yt in assisa reg. D. de ponderibus & mensuris*. And in the Cannon law, mention is maid of five shillings sterling, and of ane marke sterling, c. 3. *de Arbitris, c. Constitut. 12. de procuratoribus*. And the sterling penny is swa called, because it weyis sa mony graines, as I have findry times proven be experience. And be the Law of England, the penny, quhilk is called the sterling, round and without clipping, weyls 32. graines of queat, without tayles, quhairof twenty makis ane ounce, and twelve ounces makis ane pound; and aucht pound makis ane galloun of Wine: And aucht gallounes, makis ane buschel of London, quhilk is the aucht part of ane quarter. *Anno 17. Edward 2. cap. 19.* The quhilk cuinzie was meikle used within this Realme, as is manifest be auld Charters and evidentes. For the sexteene day of *August*, the zeir of God, 1395. *Walterus Senescalli Dominus de Ralston, Vicecomes de Perth, impignoravit, Necnon nomine pignoris dedit, & concessit Nobili & potenti Dn. Dom. Roberto, Comiti de Fife & Menteith, totam & integram Baroniam suam de N. pro ducentis marcis sterlingorum moneta Scotia, ipsi per eundem Comitem mutuatam, & pre manibus plenarie persolutis. Tenen. & haben. ipsi Comiti, & heredibus suis, de Domino Rege &c. Quousque dictus Walterus, Senescalli, aut heredes sui, prefato Domino Comiti, vel suis heredibus, ducentas marcas sterlingorum moneta Scotia uno die, inter solis ortum & occasum, in Ecclesia Parochiali de N. persolverit, vel persolverint. Et praterea dictus Walterus omnes firmas, redditus, commoditates, & proficua, de dicta Baronia, medio tempore provenien. dedit & concessit, pro se & heredibus suis, predicto domino Comiti, & heredibus suis, pro suo consilio bono, ipsi impenso, & impendendo. Faciendo inde annuatim, predictus Comes & heredes sui, Domino Regi servitia debita & consuea.*

The quhilk Charter containis the reversion, and also a donation of the profits of the lands, quhilkis were wedde-set, conforme to the practique used and observed unto the time of King James the thrid, of gud memory, *vide Reges.*

*Subvassori*s *subvassores*, bafe halders, or inferiour halders specially, they quha haldis their lands of Knights. *Leg. Mal. Mak.*

*Mak. c. 4. Quon. at. c. Si aliquis 49. Af. reg. Da. c. stat. 8.* Quhair it is ordained, that ilk person quha is accused criminally, tal be judged be his Peere, or superiour in estaite and dignitie.

## T

**T**A Y N T, *vide Attaynt.*

*Tenementum*, Is commonly taken for the property of ony lands, or immoveable gudes within Burgh, or without the samin. *Lib. 2. c. Dos duobus 19. c. Fieri autem 67. Liberum tenementum.* And the superiour suld not have the Ward of the tenement pertaining to his vassall being *Minor*: Nor can crave na service nor relieve fra him, being *Minor* or *Major*, except he first receive his homage. *Lib. 2. c. Prædictis 60.* In the quhilk signification, it is commonly used in the Lawes of England.

*Terra Dominicales*, Ane word commonly used in Charters and infeftments, quhilks are called ane Maines, or demaine lands laboured and occupied be the Lord, and proprietor of the samin: From the French word, *Domaine, Domanium, or Domanium*: Quhilk word properly signifies the Kingis lands pertaining to him in propertie. *Quia domanium definitur illud quod nominatim consecratum est, unitum & incorporatum Regie Corona, ut scribit Choppinus de dominio Francia. Tit. 2. per l. Si quando 3. C. de bon. vacant. lib. 10. Et Matthæus de Afflictis in Constitut. Sicilia, lib. 1. Tit. de locatione domanis 82.* quhilk may be called, *Bona incorporata, & in corpus fisci redacta.*

*Thannus*, Is ane name of dignity, and appearis to be equal with the sonne of ane Earle. For the *Cro* of the ane, and the uthir is alike. *Lib. 4. c. Si quis calumniatur 28. statim 64.* And *Thannus* was ane Free-halder, halding his landes of the King. *Quoniam attachia. c. Recordatio 63. Assisa Regis. David. c. Recordatio 17. stat. Alexandri. cap. Recordatio 26.* And gif ane man not taken with the sang, is accused of thieft, and

and na sufficient probation is deduced against him, hee suld purge him be the aith of twenty seven men, or of three Thanes, *Lib. 4. c. Si quis calumniatur* 28. *Thanagium regis*, signifies ane certaine part of the Kingis lands or propertie, quhair of the rule and government pertainis to him, quha therefore is called *Thanus*. For *Dominia regis*, & *Thanagia regis* idem significant. *Aff. reg. Da. c. statuit Dominus* 38. It is ane Dutch word, for *teiner* signifies ane servand, and *teinen* to serve: And *Thane* is likewise ane servand, and *Umer-thane* ane inferiour servand or subject. *vid. Leg. Britonum verbo Thanus*.

*Theme*, *lib. 1. c. 3.* is power to have servandes and slaves, quhilk are called *nativi*, *bondi*, *villani*, and all Barrons infest with *Theme*, hes the same power: For unto them all their bond-men, their bairnes, gudes, and geare properly pertainis, swa that they may dispoone thereupon at their pleasure, *lib. 2. c. Consequenter* 13. *cum seqq.* And in summe auld authenticke buikes it is written, *Theme, est potestas habendi nativos, ita quod generationis Villanorum vestrorum, cum eorum catallis, ubicunque inveniantur, ad vos pertineant. Theme cummis fra than, id est, servus*, and therefore sum-times signifies the bond-men and slaves, conforme to ane auld statute and law. *De curia de Theme. Quod si quis teneat curiam de Theme, & illa querela in illa curia movetur, ad quem Theme vocantur: non debet illa curia elongari, sed ibidem determinari, & omnes Theme ibi compariant.* Quhilk is understand of the question of liberty, quhen it is in doubt, quhiddir ony person is ane bond-man, or free-man: Quhilke kinde of processe suld not be delayed, bot summarly decided. Quhair of there is twa kinds: for either ane free-man is alleaged to be ane servand and slave, or ane quha is in servitude, desiris to be maid free, and put to libertie. *Dist. cap. 13. c. 14.*

*Thisi-bote, vide Bote.*

*Tumbrellum, Tumbrellum*, ane kind of torment, as stockes, or jogges, quhair-with craftes-men, sik as browsters are punished. *Leg. Burg. c. Si aliquis* 21. quhair it is called, *Castigatorium*.

*Toll, lib. 1. c. 3.* Custome, from the Greeke word of the samin significa-



signification *TEA*. He quha is infest with Toll, is custome free, and payis na custome: quhilk is manifest be findry auld buikes: quhair it is written. *Tol. h. e. Quod vos & homines vestri, de toto homagio vestro sint quieti de omnibus mercantibus, & de tolreto de omnibus rebus emptis & venditis.*

Mair-over, all Earles, Barrons, Knichts, vassals, life-renters, Free-holders, and al quha hes lands *nomine elemosyna*, suld be quit and free, fra payment of Toll and custome within Burgh; in bying meate and claith, and uther necessair things to their awin proper use. Bot gif ony of them be common merchandes, they suld pay thol and custome; Albeit they have als great liberty as Barrons. *De judic. c. 3. leg. Forest. cap. Comites 13.* And in the auld Briton Lawes of King Edward, it is writen *Thoiñ, quod nos dicimus Tholoneum, est quod ita infeodatus habeat libertatem emendi & vendendi in terra sua.*

*Torralium, Thorallium, à torrendo*, is called ane Kill, quhair cornes are dried. *Leg. Burg. c. Si quis 53. De combustionem domus aut torralii*: Of the burning of the house, or Kill. Gif ane servand burne rակlessly thy house, Kil, or nighbours house adjacent, he suld not be punished, bot tinis his service. Bot gif ony man hiris ane Kil, and it burne, he sal pay bōt the hire. Bot gif he borrowis it, and it burne, he fall pay the valure of it to the party skaited, *vid. Jam. 1. p. c. 71. cum seqq.*

*Tort, Et non reason*, un-reason, wrang, and unlaw. *Stat. Rob. Br. cap. Item quod nulla 17.* *Tort* in the French tongue, is wrang or injury: Unlaw cummis fra *On*, *Privativa particula* apud nos & Germanos eodem modo quo in, apud Latinos, and Law, or lauch, *id est lex*: *Quasi sine lege, vel contra legem, vel quod non jure fit.* *Jus Normand. Lib. 12. c. 1.* *Actiones* of wrang and unlaw, appearis to be civill *actiones*, and are opposed to *actiones criminal*, touching life and lim. *Stat. Alex. c. si quis 9. cum seqq. leg. Mal. Mak. c. 4.*

*Toschoderache*, ane office or jurisdiction, not unlike to ane Bailliery, specially in the Iles and Hie-lands. For the 9. Mart. 1554. *Neill Mack neill*, disposed and annallied to *James Mack Oncil*, the lands of *Gya*, and uthers, with the *Toschodairach* of *Kintyre*. Some alleagis it to be ane office perteing to exe-

cution of summondes. *Lib. 1. cum autem. 8. Quon. attach. c. Si aliquis 49.* Sike as ane quha summondis, attachis, or arreis ane uther, to compeir before ony Judge. *Stat. 2. David. c. 6.* Uthers understandis the same to be ane Crowner. *Lib. 4. cap. Raptus 9.* Last, sum understandis it to be ane searhour, and taker of thieves and limmers: For King *Evenus* did statute, that in findry Schireffdomes, there suld be findry searhours of thieves, rievors, and of them that lye in wait in hie streets, and common passages. *Heclor Boetius, lib. 2. 10. Aberrans, inquit, Pecus, aut Domino furum indagatori (Tochederauch vulgus appellat) aut Sacerdoti reddito: quod si triduum apud te retinueris, furis reus esto:* In the Civil Law, they are called, *Latrunculatores. l. Solemus 16. ff. de Indic.*

*Timbria Pellium, leg. Burg. c. Capitulum. 138.* An Timmer of skins: That is, swa mony as is included within twa broddes of Timmer, quhilk commonly conteinis fourty skins: In the quhilk maner, merchandes usis to bring hame Martrick, Sable, and uther coastly skins and Furrings.

*Timbrelus, Dicitur parvus Cetus, ane little Quhaile. Leg. Forest. c. Siquis cetum 17. de Judic. c. 27.*

*Tinnelius, de judic. c. 27. leg. Forest. c. Si quis Cetum 17.* The sea-mark, utherwaies in English, Tyde-mouth. That is, the farrest part quhair the sea-tyde flowis. *Littus quo scilicet fluxus hybernus maris maximus excurrit, hoc est, quantumcunque mare aliquo tempore plus extenditur in hyeme vel aestate, tantum est littus ejus. Sect. Flumina. Et ibi Gl. Instit. de ter. divis.*

*Traistis, Jam. 3. p. 14. c. 99.* Signifies ane Roll or Catalogue, containand the particular dittay, taken up upon malefactours quhilk with the portuous is delivered be the Justice Clerke to the Crowner, to the effect the persons, quhais names are contained in the portuous, may be attached conforme to the dittay, contained in the traistis. For like as the portuous comprehends the names of the persons indited: swa the traistis conteinis the kinds of dittay, given up upon them quhilk is swa called, because it is committed to the traist, faith and credit of the clerks and Crowner, quha gif they be trusty & faithful, suld nocht reveale, delect, change, or alter the samin. *7a. 2. p. 6. c. 28.*

*Tribula,*

*Tribula, leg. Burg. c. Si homo* 16. Ane Flaile quhairwith corn is threshen, *A terendo, quòd frumentum terat.* Like as *Tribulus* is called ane Thrissil, and *Tribulum* ane Pestel, quhairwith spices or ony uther thing is brayed in ane morter: *Barbare magis quàm Latine, secundum usitatum verbum à pueris in scholis decantatum: Tribulus thressill la flaill, lum quoque pestell.*

*Tuernay, Quid sit, valde ambigo, & hinc aliorum avidè expecto judicium.* In the Burrow lawes, cap. *Quilibet* 34. *Si uxor alicujus fuerit calumniata de aliquo, in placitis Burgorum mittitur Tuernay:* That is, as in the auld English buik, the husband may do richt for his wife, in Courts of Burgh. *Et de judic. cap. cum quando* 28. *Si quis fuerit implacitatus coram justitiario domini regis, vel alio ballivo, si dominus ejus, vel ejus Ballivus venerit & allegaverit pro ipso in debita hora, potest recuperare curiam domini sui. Et si per negligentiam suam responderit & dixerit tuentynay de omnibus sibi oppositis planè respondebit, & sic amittit curiam Domini sui.* In quibusdam libris legitur *Twentynay.* Itaque conjicio esse antiquum verbum forense, quo reus utens, intelligitur approbasse judicem, adeo ut eum postea declinare non possit.

## U

**V**ADUUM, *Vadimonium*, from ane auld word *veldum*, used in Britton Lawes: In Latine, *Pignus*, in French, *Gage*, quhilk we cal ane Wedde. *Immobile vadium*, signifies immovable gudes, sik as lands annalied and wed-set under reverfion: The profits quhairof, *computantur in sortem*: That is, are compted and reckoned within the Rok. Swa that the samin being payed in sik quantity as extendis, and is equivalent to the quantity of the stock, and principal summe: I hereby the principal summe is esteemed, as compted and payed, quhilk is called *Mortuum vadium*, vid. *Mortgage*. Bot now the contrair is maist commounly used in practique of wed-sets and alienation of lands under reverfion. And be the auld Law of this Realme, is called ocker and usury, and zit be the samin, was

permitted and tolerated, *lib. 3. c. 6.* Quhidder the commoun forme of wed-setting of lands now used under reversion, is leasum or unleasum. *Vid. Ias. in L. cunctos populos C. de summa Trinitate. Et Chrs. in Consuetud. Burgund. Rubric. 5. sect. 1. 2.* In auld times, I find that quhen lands war wed-let, *nomine pignoris*, or *ad immobile vadum*: The profits and rents thereof were given and dispoñed be the annalier to the byer, for some certaine reasonable causes; as, *pro consilio, vel auxilio impenso, vel impendendo*; to the effect, that the byer bruikis the lands, *ex dispositione legis*. Swa he nicht have right to the profits thereof, *Ex pacto & conventionione hominis, vid. Reversion. vid. Sterlingus. vid. Mortgage.*

*Vadiare duellum, lib. 4. c. 2.* A vadii datione, to enaët battell, as in the English Lawes, be giving of pledges, baith be the persewer and defendar before the Justice and his deputes. The persewer is said, *Vaduare duellum*: Quhen after leave asked and obtained from the King, he offers to proove in plaine field, al to be trew, quhilk he affirmis, and to that effect, offeris ane wad or plege: And the defendar is understand to *vadiare duellum*, quhen he denies al quhilk is spoken be the persewer, and affirmis the samin to be false and untrew; and thereto offeris his body to fight with him, and ane wad or pledge to that effect. *De judic. c. 61. c. 86. Adolynus stil. cur. par. part. 1. c. 16. Et author tractatus de Corona, Appellatus (inquit) defendet latrocinium, feloniam, & totum factum per patriam, vel per corpus suum, secundum electionem suam, prout curia consideraverit, aut vada-verit. Si autem elegerit se defendere, per corpus suum: vadietur inter eos duellum. Et appellatus det Vadium defendendi, & appellans det vadium distracionandi.* Bot Philippus Pulcher, King of France, discharged all singular combates, and al finding of pledges there-anent. *Molinaus D. part. 1. c. 10. De duello.* In this Realme, the appealer and defender castis their glooves til uther, quhilk representis the finding of the pledge.

*Vagabund*, is called properly, ane quha hes na certain dwelling-place. *Guido Papa quaest. 202. per Gl. 1. sect. 1. Prator. ff. de damno infecto.* Quhilk is very specially declared in the act of Parliament. *Iam. 6. p. 6. 20. Oñob. c. 74.*

*Varda,*

*Varda*, ane French word *Garde*, custodie or keiping: For we use the letter *W*. quhair the French-men usis the letter *G*. As Wardaine, for Gardaine, Warderobe, for Garderobe: Warren for Garen. And the ward custody, and keiping of the aire, haldand his lands be service of ward and relieve, pertainis to his immediate superiour, quhilk is conforme to the Lawes of Normandy. *Lib. 5. c. 10.* Quhair-anent thir rules after following suld be observed and worthy to be noted.

1 The ward and custody of lands, halden be service of ward and relieve pertaineing to ane aire, being *Minor*, and of lesse age, aucht, and suld pertaine to the Over-lord and superiour of the saidis lands, quha within the time of the ward, may present Ecclesiastical persons to Kirks vaikand: suld sustein honestly the aire, and suld not only pay the debts, aucht-and to the defunct: Bot also aske and crave all debts aucht-and to the defunct, or to the aire, and persew and defend all actions competent to him: Bot he may not destroy nor annaly any part of the lands. *Lib. 2. cap. Plenam 42. c. Restituerit.*  
44. *vid. Relevium. vid. Hawbert.*

The ward pertainis to the superiour.

2 Touching the custodie and keiping of the person of the aire of ward lands, or of any uther lands, or quhat-sum-ever maill or femaill, gotten or borne in lauchfull mariage: the samin pertainis to the mother, after the decease of the father, untill the bairne be of the age of seven zeires compleit, conforme to the common practique of this Realme, and the Civill Law. *L. 1. & Tot Tit. ff. ubi Pupil. educar. debeat.*

The keiping of the bairns pertainis to the mother.

For be the Law of this Realme, grounded upon the Clima-terick zeires of *Septenarius & Ternarius*: That is, of seven and three zeires: there is three kinds of age. The first of seven zeires, during the quhilk time the bairnes are in custody of their parents. The second is, of fourteen zeires, after the quhilk time, ane air may enter to his lands, annaly and dispoone the samin, as he pleasiss. And before the quhilk time, na person may be indited to the Justice aire, or accused of life and limme, *leg. Forrest. cap. Nota quod 15.*

Three kindes of age.

3 The keiping of the aire being *Minor*, haldand lands of the King, pertainis to him allanerly, albeit the said aire have

The keiping of the aire pertainis to the uther King.

uther superiours of uther ward lands, elder and prior in time to the King: *Quia rex nullum potest habere parem, multo minus superiorem in suoregno*: Bot gif ane aire haldis lands, *nomine Burgagii* of the King: And uther lands *nomine warda & relevii*, of ane uther superiour, priour, or posteriour to the King, the Custody and keiping of the said aire, perteinis not to the King, bot to the said superiour, *Quia ratione Burgagii Dominus Rex non praefertur aliis Dominis capitalibus in custodia, lib. 2. c. Notandum 45.*

The keiping of the aire perteinis to his superiour.

4 After the outrunning of the seven zeires, and the aire beand of that age, haldand lands of ward of ane superiour, and having na lands be reason of ward of the King, the superiour suld be preferred, anent the person of the aire to the mother, Gud-schir, tutour, zea, to the King himselte, and all uther persons, 16. Julii 1531. Pen. Julii 1532. The Abbot of *Abirbrothok*, contrair *Marion Forbes*, 28. Julii 1529. *James Sandielands of Calder*, contrair *Edward Sinclair*.

The eldest superiour is preferred to all uthers.

5 The custody and keiping of the person of ane aire, havand lands halden of diverse superiors, be ward and relieve, perteinis to the eldest superior, to quhom the first homage was made: Or of quhom hee hes the eldest and first intettment, or forme of halding. For albeit, ilk ane of the superiours hes the ward of the lands halden of himselte: zit concerning the keiping of the person of the aire, the principall and eldest superiour, is preferred to all uthers, *lib. 2. c. Restituere 44.*

The superiour is preferred to the tutor.

6 The keiping of the aire havand lands blench, or in fewferme, and also ward-lands, perteinis to the superiour, be reason of the ward, and not to the tutour, havand intromission with his blenche or few-lands.

The keiping of the aire, followis the richt of the mariage.

7 Gif the superiour, havand the richt and title to the ward and mariage of ane aire, disponis the ward to ane donatar, and the mariage to ane uther: The donatar to the mariage allanerly, suld be preferred in keiping of the person of the said *Minor*, to the uther donatar of the ward, and all uthers: *quia jus maritagii est personale, & sequitur personam.*

The keiping of the aire, suld not be given to his appearand.

8 The keiping of the aire, suld never be committed to him, quha may claime, or claimis ony richt to his lands and heretage:



tage : Or may immediatly succeed after him thereto. *Lib. 2. c. heredes 47. Hac enim ratione illi posset præberi occasio captanda mortis ipsius hæredis, quod est periculosum & impium.*

9 Be the laws of this Realm, the aire mail, and all his lands halden ward, are within ward and keeping of his superiour, untill he be of the age of twenty ane zeires. And the aire femaill, untill sche be of the age of fourteene zeires. *Mar. par. 3. cap. 5. lib. 2. c. 39. de judic. c. 65. c. 121.* Because the lands pertaining to the aire maill, are subject to the King or uthor superiour be service, quihilk the *Minor*, be reason of his lesse age and zouth-head, cannot doe. And therefore the King or superiour, wantand the service, hes recourse to the land : that he may be served be the profits thereof, taking up to his awin use, or be ony person to quhom he pleasis to dispone the famin, untill his vassall be of perfite age, and able to serve. And the aire femail is in the ward and keeping of her superiour, untill sche be fourteen zeires of age as said is. For suppose ane woman of twelve zeires of age, be the civil law, may marry ane husband, zit be the law of this Realme sche may not marry, until sche be fourteen zeires compleit : At the quihilk time sche may lauchfully marry, with consent of her superiour. *Lib. 2. c. Mulier. 48. cap. in Custodiis 90.* And therefore sche being subject to her husband ; It is not reason sche suld be also subject to the ward of her superiour : and consequently under twa wards, and twa findry severall powers. Mair-over, sche being married, with consent of her Over-lord, her husband may doe sik service, as suld be done to him be the possessor of the lands, quihilk is conforme to that quihilk is written be Doct. *Thomas Smith*, of the commoun weill of England, *lib. 3. c. 5. c. 8.*

*Varda curia, Quom. at. ach. c. ubi aliqua 10. cap. in omni 18. c. nullus 20.* The interloquutor or decreet of the Court : *Curie dicimur vardare, considerare, pronunciare*, in this forme. The Court counsellèd and advysed. And *I. N.* Soytor of it, be their informations saith, that this Court counsels, and *I. a* ward, that *N.* is in ane default for his absense this day. The like forme is used in the daily practique, quhen the Judge or Clerke, be the mouth of the officiar or dempster decernis and adjudges ony

ony person to be in ane unlaw, for absence or ony uther cause. And *lib. 2. c. ult.* that quhilk is called *vereditum assise*, in the samin place, in *libro Carbreith*, is called the waird, veredite, or deliverance of the assise.

*Vareenna*, ane French word, ane *Garene*. That is, ane place quhilk is dyked and inclosed for beastes, Cunnings, or uthers, *Quon. attach. cap. 29. Mod. ten. cur. cap. 21*. In Latine, *Paradisus*. And the keiper of ane Cunningar or Cunnings, is called ane *Garenter*. *Infeodatus in liberam varennam*, is nocht meikle different from infestment, in *liberam forestam*. The quhilk kind of infestment of auld is given to the Laird of *Rosling* his predecessours, of the Barronny of *Pechtland*.

*Ware*, wair of the sea, ane word used in sundry infestments : in Latine, *algamaris*. As in the Latine proverb, *abjecta vilior alga*. He quha is infest therewith, may stop and make impediment to all uther persons, als weill within the flood-marke, as without the samin, to gather wair for mucking and guding of their lands. Or to gather wilkes, Cockles, Lempets, Mussels, sand-eiles, small fish, or baite, upon the sand or craiges, foreanent his lands, 24. Maii 1549. The towne of *Carrail*, contrair *Grissell Meldram*. Utherwaies, gif ony person be not infest with sik priviledge, he may na-waies forbid, trouble or molest the King, or ony of his lieges to doe the premisses : Or to win staines, quarrel, or to exerce ony uther industry to their awin profit and commodity, within the flood-mark of the sea. *Quia usus maris est communis omnium* 29. Julii 1500. The King, contrair the Laird of *Seafeild*. *Ware* cum fra ane auld French word, *Varech*, used in the lawes of Normandy, *lib. c. ult.* Quhilk signifies ony guds or geare, cassen out be the sea to the land, quhilk properly we call the wrak of the sea.

*Vassallus, quasi bassallus, inferior socius*. From the French *Bas*, as *plus Bas*, in Latine *inferior* ; And the Dutch word, *Gesel* : in Latine *socius*. For the vassall is inferior to his Maister, because he suld serve and reverence him. And zit hee is in ane maner companion to him, because ilk ane of them is mutually obliged till uthers. *Vid. affidatio, & Cuia lib. 1. de feud.* writes that *leudes, leodes, fideles, homines nostri, feudatarii, ministeriales, beneficiarii*,

*fasciis, beneficiis, vassallis*, almost signifies one thing: And *vassallus*, in Latine is *cliens*: Because the relation is betwixt *dominus* & *vassallus*, as is betwixt *patronus* and *cliens*. *Molinæus in instit. cur. part. 16. pag. 48.* Albeit *Cujacius* affirms the samin to be many waies different. And ane *Bas* infestment is when the vassal annallies his lands halden of himself and his aires, quibilk is ane inferiour, private or subalterne infestment. In the lawes of the fewes, *vassallus* is called *fidelis*, *quia fidelitatem jurat*, he suld sweare to be faithfull and trew to his maister, Amanges vassals, the first place of dignite is given to them quha are *Duces, Marchiones, Comites*, and are called *Capitanei regni*. The second is granted to Barrons and uthers oflike ranke and estait: And are called *Valvassores majores*. The thrid, is of them quha are called Gentlemen or Nobles, haldand of Barrons, quha likewise may have under them vassals, also Gentlemen: For ane Gentleman may hald of ane uther. And his vassals haldand in thiefe of Barrons, are called, *valvassores minores*: And they quha haldis their lands of them, are called, *vassalli, valvassini seu minimi valvassores*. *lib. 1. de feud. Tit. de natura feudis. sect. 1.* Bot in the lawes of this Realme, they quha haldis of Barrons are called *militēs*, and they quha haldis of them are called *subvassores*. *vid. Amerciamentum, vid. Baro. & Jacob. Cujacium. lib. 2. de feud. Tit. de nominibus vassallorum.*

Waife beast, *pecus vel animal aberrans*, quihilk wanders and wavers without ane knawen maister, quihilk being fund be ony man, within his awin bounds, hee suld cause the samin to be proclaimed; diuerse and sundry times upon mercat dayes, at the Paroch Kirk, and within the Schireffedome: Utherwaies, gif he deteins the samin, he may be accused for thief thereof. And it is leskum to the awner of the beast, to repeat and challenge the samin within zeir and day. *Quon. attract. c. ascheta 30. vid. T ofe brodenach.* In the lawes of France it is called *effave*; *quo significatur omne illud quod aberrat.* *Gloss. in consuet. Burgund. Rubric. 1. scil. 1. Verb. Effaves.* In Latine, *res praedeli. Ita habita. l. falsus 44. ff. de furt.*

Webbe; Measuren, and diuerse kindes thereof, *uid. Serplath.* Reade likewise *Affisan Regis David. de ponderibus & men-*

Y

Suri.

*juris*, Jam. 1. p. 4. c. 68, 69, 70. Ja. 1. p. 3. c. 57. 58. Ja. 6. p. 11. c. ult.

*Vennyson*, ane word used in infeftments, *a. venando*, *sen ventione*, and likewise commonly used in the Lawes of England, and signifies licence and power to him, to take and slay of the Kingis Venison within his Parkes and Forrests: Quhilk utherwaies is not leasum, bot is sharply punished with an egrievous fine, or be banishment or prison, *leg. Forest. c. 91*. Quhilk is conforme to the lawes of England; *An. 9. Hen. 2. c. 10*. Bot be the disposition of the Forest laws, it is leasum to ane Erle, Bishop, or Barron, command or returnand throw the kingis Forest, at his command, to take ane or twa beasts, be the sight of the forester, gif he be present: and utherwaies he fall blow ane horne, that he appear noch to take the samin thieftiously, *leg. Forest. c. 90*.

*Ver d*, verr, from the Latine *viride*: ane word used in Charters and infeftments, and also in the English lawes, quhair it is called *Grenebue*, & signifies power to cut green-trees or wood. And being committed be them quha hes noch power to doe the samin, is punished be the foresters, or vierders, quha are called *Viridarii*, in the lawes of Normandy and England. Be the auld law of this Realme, all forrests commonly pertained to the King: and the richt of forestary was given and disposed in thir words, *in liberam Forestam*, as is expounded in the word *Foresta*. And ane of the priviledges or liberties, that is, *potestas secundi*, licence to hew or cut greene wood, was granted be the King, be infeftment and disposition containand *Verb*. Quhilk liberty the King may grant within his hail forest, or ony part thereof, to ony person for sewelly, or fire, bigging, or for ony uther particular use, quhilk person may not abuse the said forest or wood, after his awin appetite and will, bot at the sight and discretion of the forester, and uther officers, or according to the forme and maner set downe, and limitate in his infeftment and gift, as writtis *John Pappon, lib. 4. Tit. 3*.

Secondly, this word *verb*, may be taken for power and licence of pasturage within the Kingis forrests, granted to him quha is infeft therewith, quhilk in the English lawes is called, the common of Herbage, and of uther things in the Kingis forrest, pertaining to them quha are accustomed to have the samin

*famin.* Cart. de Forest. c. 1. *Mag. Cart. Anno 9. Hen. 3. c. 8.* and iustment, herbage, *agistamentum* & *herbagium*, in Latine, *iuxta pascendi pecoris*, is quhair ane tennent hes right given to him of the feilding, grassing, or pastouring of his cattrell within ane Parke or any uther ground inclosed.

*Verdictum Assise.* vid. *Proporcitas*, vid. *Varda*.

*Vergelt*, ane Saxon or Dutch word, from *Ver*, id est, *vir vel homo*, & *Gelt*, *pecunia sive compensatio*, as *vergelt furis* is threttie Kye, and ane quoyach. *Lib. 4. c. de unoquoque 17.* Or threttie three Kye: *Stat. Alex. cap. de unoquoque 34.*

*Villanagium*, & villano, sklavery or servitude. *Lib. 2. c. Consequenter. 13.* vid. *Bondagium*.

*Visnetum*, from the French word *Voisin*, nichtbour, *quasi visnetum* or *Vicinetum*, from *vicinus*, ane quha dwellis neare unto ane uther, or in the four halves about, from the quhilk cummis the French word, used in the English lawes, *Vicinage*, and in the lawes of this Realme, *Assise de vicineto*, is ane assise of nichtbours, or of the four halves about, vid. *Assise*.

*Whisondates* *sec. Jam. 2. p. 14. c.* Or *Whis-sundayes* making. *Jam. 9.* in the same Par. cap. 90. Utherwaies called *Whis-sundayes* styles. Quhilkis were certaine constitutions and statutes quhilkis free-halders, baith spirituall and temporall, and specially convents of Abbayes and religious places, maid betwixt them and their tennents before *Whis-sunday*, for service to be done to them, and better labouring of their lands, and payment of their dewtie.

*Unlaw*, vid. *Amerciamentum*, vid. *Tort*.

*Unctum porcorum*, swines seame or fatnesse. *Leg. Burg. c. si quis scienter 71. ab ungendo*, because it is profitable for uncti- ons and smeering.

*Vosh* signifies Out-lawrie, *Utlagium*. And in our auld Scotch langage ane *Foutbman*, is ane out-law, or ane fugitive fra the lawes. *Mair-over*, *Vosh* signifies persewed, calling, or accusation, from *Voucher*, id est, *Vocare*, used in the auld French and English lawes.

*Wrang* and unlaw, vid. *Tort*. To deny wrang and unlaw, quhilk the defender denyes that quhilk is objected to him, or

quhair of he is accused, and zit confesses that he hes done uther-waies than he aucht to doe, and swa hes not done his dewtie, for the quhilk he is reddy to make amends and satisfie the party offended, *Leg. Burg. c. 101.*

*Wreck* of the sea, ane word specified in the lawes and findry infestments, quhilk signifies power, liberty, & prerogative competent to the K. or to ony person, to quhom the samis is granted be him be infestment, or ony uther disposition, to intromet & up-take sik guds and geare, as schip-broken, or fallis to him be escheit of the sea: quhilk liberty is als competent and profitable to him quha is infest with wreck, as it micht be to the King himselfe giver theirow, *Quia uuala pertinens ad Dom. regem & uuala competens uassallo, ex donatione regis pari jure estimantur, l. Forestic. inter antiqua 56.* And in the lawes of England, *An. 3. Ed. 1. c. 4.* concerning wreck of the sea, it is statute, that quhair ane man, ane dog, ane cat, escapes quick out of the schip, that sik schip or barge, nor nathing within hir, sal be adjudged wreck, bot the guds sal be saved and kepted be the sight of the Schireffe, Coroner, or the Kingis Bailly, and delivered into the hands of sik as are of the towne, quhair the guds were fund, sa that gif ony crave the guds within ane zeire and ane day, after prufe, that they war his awin, they sal be restored to him without delay. And uther-waies they sal remaine to the King. And the Schireffes, Coroners, and Baillies of this towne, intromettours therewith, sal be answerable therefore to the Kings officers, and quhair wreck belangs to ane uther then to the King, he sal have it in manner abone expremed. And quha so ever dois utherwaies, and is attaint or convict thereof, he sal be imprisoned, and pay ane fine arbitrail to the King, and the damage to the party. Sik-like be the lawes of England, the King suld have the wreck or escheit of the sea, throwt the Realm, of Whales and great Sturgeons taken in the sea, or els quhair within the Realm: except in certain places privileged be the King, *An. 17. Ed. 2. c. 11.*

*Uilagium, vel uilagatium*, outlawry, rebellion, disobedience to the lawes, banishment, or foresaltour. *Jam. 2. p. 6. c. 30.* For gif the King restore *ex gratia*, ane man that is outlawed or foresalted,



forefalted; he thereby recovers nocht his lands, bot be the gud will of his over-lord, *Quia forisfactum & utlagationem D. Rex damnatus solet remittere: nec tamen aliena fura queris nec potest infringere, lib. 2. c. forisfactum, 55. de judic. c. si per legem 149.*

## Y

**Y**BURPANANSECA, it appearis to be like that, quhilk is called the law of Birdingsek, for in sum auld authentick buiks it is written, *lib. 4. c. 14. yburpan in secca. h. c. de furto vituli veharietis, vel quantum cibi, quis portare potest super dorsum suum curia non est tenenda.* Sum affirms in the Gascoin language *Pana*, to signifie *furari*, to steill, and *Panadour*, to be ane thief; and it appearis weill, *Seca* signifies ane seck. In Latine *Saccus*, quhilk word is commonly used in all tongues and languages amangs all people and nations.

## Z

**Z**ARDE. *lam. 1. p. 7. c. 99.* Is ane kind of measure commonly used in England, nocht meikle different from our elne. Ane zaird of land *virgata terra*, in the Britton lawes, is ane measure of land, quhilk in diverse places is diverse, sumtimes of 20. aikers, sumtimes of 24. and sumtimes of 30. aikers.

*Zelde*, ane gift or donation, *vid. Herexelde.*

*Zemsel*, of ane Castel, the custody and keeping of ane Castel. *leg. Burg. c. 3.* For *Zeme*, in our auld language, is to observe and keepe, as quhen in time of singular battell, they quha stands by and beholders are commanded to keepe, and *Zeme* the time of the derenzie, the weapons fra the hands of the appealer and defendour, *In lib. Feud.* It is called *Feodum Guardia*, in Latine, *custodia*, & *Guardiani custodes*, to quhom Castels and territories of lands are committed in keiping, quhom we call Wardaines,

daines, as writis the Interpretors of the Fewes, and specially, *Zafius defendis. Par. 12. Nu. 7.* And in this Realme lands, annuall-rents, or dewties given for keiping of Castels, are called *Casteluardia.*

F I N I S.



**A**nc Admonition to the Reader, touching  
the Buiks containand the Lawes of this Realme,  
*and abbreviations used in the Treatise proceeding.*

**I** Have alleaged in this little Treatise, the first word, with the number of the Chaptour of ilk buike of the auld Lawes of this Realme, written before King *James the First*, of gud memory. Because there is great diversity anent the number of the Chapters. Swa that thereby, there can be na sic or certaine allegation. Bot gif the number failzie, the first and capital word, will be ane sure guide and convoy to the richt place alleaged.

*Leg. Mal. Mak. Leges Malcolmi Mackenneth.* The lawes made be King *Malcolme* the second of that name, very gud and profitable, bot few in number.

*Lib. 1. lib. 2. lib. 3. lib. 4.* The first, sepond, thrid, and fourth buiks of *Regiam Majestatem*, maid be King *David* the first. Swa called and intituled from the first word of the beginning thereof, to the imitation of the four buikes of the Institutions of the civil lawes, quhilk beginnis *Imperatoriam majestatem.*

*Quo. attach. Quoniam attachiamenta.* Swa called fra the first word therof: containis the Barron laws, and forme of the Barron court, written in the time of the said King *David* the first.

*Mod. ten. cur. bar. Modus tenendi curias baronum.* ane buike written in Scottish language, quhilk is not of great antiquity, as may be knawen be the style and language thereof, and is not contained in the auld buikes maist worthy of faith and credit, alwaies it is ane interpretation of the buike, *Quoniam attachiamenta,*

*menta*, maid be sum man, quha hes eiked and augmented findry things profitable for understanding of the forme of proceffe used in auld times.

*Leg. Burg. leges Burgorum*, The lawes of Burrowes, maid in the time of the said King *David* the first, be relation and information of certain learned men, quhom he send to uther cuntries to learne and report to him the lawes and ordinances thereof, quhilk was done be them within the space of twa zeirs or thereby, as is plaine and manifest be auld authentike buikes. And it is probable that he hes used in like forme and proceeding, in making and furth-setting of the remanent his lawes.

*Stat. Wilh. Statuta Wilhelmi*, statutes and laws maid be King *William*.

*Stat. Alex. statuta Alexandri*, Statutes and lawes maid be King *Alexander* the second of that name, son to King *William*.

*Stat. 1. Rob. Br. statuta prima Roberti Bruyse*.

*Stat. 2. Rob. Br. statuta secunda Roberti Bruyse*, Quhilk statutes and lawes made be him are co-incident, and for the maist part containis the like, or samin lawes.

*Aff. Reg. Da. Assisa regis David*: Lawes maid be King *David* the *Bruyse*, called King *David* the second: And in some buikes are called, *statuta regis David*.

*Stat. Rob. 3. statuta Roberti tertii*: Statutes made be King *Robert* the thrid, father to King *James* the first, quhilk as zit remains in the Register of this Realme.

*Leg. Foresti leges Forestarum*: The lawes of Forests, quhair of the Author is not knowen to me.

*Iter Camer. Iter camerarii*: The Chalmerlaine aire: quhilk as some alleagis, was written and put in forme, in the time of King *James* the thrid: Albeit the samin Courts were frequent and meikle used mony zeires before him.

*De maritag. de maritagio*: Ane little treatise, written be some private man, and is na-waies authentick: It is so called, because the beginning thereof is, *De marito*.

*Stat. Gild. Statuta Gilde*, Certaine ordinances and constitutions touching Burgessees, gild-brether, maid and constitute be *Robert Durhame*, Maire of *Bernick*, *Simon Marchel* and

and uthers wise-men, inhabitants of the said Burgh.

*Leg. port. leges portuum*, ane Treatise collected and written be sum particular person, quhilk is not authentick, and containis ane brieft summe and abridgement of the auld laws, and is swa called, because it containis the ordinances anent the customes of ships, passand furth of this Realme, or arryvand to the samin, laidened with merchandise, and the forme of customes, baith outward and inward.

*De judic. De iudiciis*, Ane lang and large Rapsodie, collected furth of all the buikes, containand the civil law of this Realme. It is not authentick, bot zit very profitable for exposition of sindry places of the principall and authentick buikes. It is swa called, bereason the beginning thereof is, *De iudice eligendo*.

The actes of Parliament of King *James* the first, and his successors, are alleaged be the name of the King or *Queene*, author thereof: As *Ia.* for *James*, *Mar.* for *Mary*. p. for Parliament, and mair-over be the number of the Parliament and Chaptour.

Decretes given be the Lords of the Session and Councell, are alleaged be the day, moneth, and zeir of God, in the quhilk they are pronounced, and sumtime be the names of the personer and defender.

Quhair ony thing is written in the exposition of ane word, quhilk may serve for the declaration of ane uther, for eschewing of unprofitable repetition, I remit zou from the word to ane uther, be *vid.* for *vide*, and swa see and reade the exposition of the ane and the uther: For thereby ze sall be mair largely instructed.

FINIS.

